United States Court of Appeals
for the Second Circuit

APPENDIX

NO. 77-4149

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P/J

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

ACME WIRE WORKS, INC.,
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FILED
NOV 4 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570.

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Acme Wire Works, Inc.
Board Case No. 29-CA-4866

2.20.76	Charge filed
4.20.76	Complaint and Notice of Hearing, dated
5. 5.76	Respondent's Answer, dated
5.25.76	Respondent's Demand for a Bill of Particulars, dated
5.26.76	Order rescheduling hearing
6. 2.76	General Counsel's Reply to Demand for a Bill of Particulars, dated
6. 9.76	Administrative Law Judge's Order regarding Demand for a Bill of Particulars, dated
7. 8.76	Order rescheduling hearing, dated
8.31.76	General Counsel's Supplemental Reply to Demand for a Bill of Particulars, dated
9. 7.76	Hearing opened
9. 7.76	Hearing closed
1.19.77	Administrative Law Judge's Decision issued
2.17.77	Respondent's Exceptions to the Administrative Law Judge's Decision received
2.18.77	Party to the Contract's Exceptions, received
4.28.77	Decision and Order of the National Labor Relations Board, dated

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

In the Matter of:

ACME WIRE WORKS, INC.,

-and-

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,

-and-

LOCAL 810 STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Party to the Contract.

29-CA-4866

National Labor Relations Board
16 Court Street
Brooklyn, New York
Tuesday, September 7, 1976

The above-entitled matter came on for hearing commencing at 11:30 o'clock A. M.

BEFORE: ROBERT A. GIANNASI, Administrative Law Judge.

APPEARANCES:

ALVIN BLYER, ESQ.	Counsel for the General Counsel, 16 Court Street, Brooklyn, N. Y.
MS. VICKI EHREN EHRENSTEIN, ESQ., of counsel	On behalf of Local 455, Sipser, Weinstock, Harper, Dorn & Leibowitz, Esqs., 380 Madison Avenue, New York, New York

APPEARANCES (continued):

STAN ISRAEL, ESQ., of counsel	On behalf of Acme Wire Works, Inc., Bluestone, Klugman & Israel, Esqs., 509 Madison Avenue, New York, N. Y.
JEFFREY L. KREISBERG, ESQ., of counsel	On behalf of Local 810, MIRKIN, BARRE, SALTZSTEIN & GORDON, P. C., 90 Cutter Mill Road, New York, New York 10003

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PROCEEDINGS

JUDGE GIANNASI: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Acme Wire Works, Inc., and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, and Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case No. 29-CA-4866.

The Administrative Law Judge conducting the hearing is Robert A. Giannasi, and would the representatives for the parties state their appearances for the record?

MR. BLYER: On behalf of the General Counsel, Alvin Blyer, of 16 Court Street, Brooklyn, New York.

MS. EHRENSTEIN: For Local 455, Sipser, Weinstock, Harper, Dorn & Leibowitz, 380 Madison Avenue, by Vicki Ehrenstein.

MR. ISRAEL: For the Respondent Acme, Bluestone, Klugman & Israel, 509 Madison Avenue, New York, by Stanley Israel.

MR. KREISBERG: For Respondent Local 810, Mirkin, Barre, Saltzstein & Gordon, P. C., by Jeffrey L. Kreisberg.

JUDGE GIANNASI: At this time do you want to introduce the formal documents?

MR. BLYER: Yes, Your Honor.

I would like to have marked for identification and introduced into evidence at the same time, General Counsel Exhibit No. 1, which includes an index and the index is designated as 1P.

I believe all parties have seen the document and have no objection to its introduction.

JUDGE GIANNASI: Any objection to receipt into evidence of G. C. 1?

MR. ISRAEL: No, sir.

JUDGE GIANNASI: General Counsel's Exhibit 1 is received into evidence.

(Document marked General Counsel's Exhibit No. 1 for identification and received in evidence, of this date.)

JUDGE GIANNASI: Are there any motions or other preliminary matters?

MR. BLYER: Yes, Your Honor.

In speaking with counsel for the Respondent Acme, he has informed me that he is prepared to amend his answer to the complaint so as to admit Paragraph 3-A if

I include in that paragraph that the company has at all times maintained its principal office and place of business in addition to 344 Wyckoff Avenue, if I add 326 Menehan Street.

JUDGE GIANNASI: Sounds like a reasonable request.

MR. BLYER: Right, and so with that amendment to the complaint to include 326 Menehan Street, which is also in the Borough of Brooklyn, City and State of New York, I believe Mr. Israel is prepared to amend his answer to admit that paragraph.

MR. ISRAEL: That is correct, sir.

JUDGE GIANNASI: All right, I will accept that.

MR. BLYER: He has also informed me he will admit to Paragraph 4 and to Paragraph 6-A.

JUDGE GIANNASI: Without any concessions?

MR. BLYER: Right.

JUDGE GIANNASI: Is that correct, Mr. Israel?

MR. ISRAEL: That is correct.

JUDGE GIANNASI: I will accept that, too.

MR. BLYER: A subpoena has been served, Your Honor, on Acme Wire Works, on Mr. Batthaney, and I would appreciate at this time if he would respond to that subpoena.

MR. ISRAEL: Your Honor, the subpoena calls for the current collective bargaining agreement between Local 810 and Acme.

Acme has searched the records.

Now, we have a document which is the existing collective bargaining agreement between 810 and Acme.

I would just point out that this document is signed on behalf of Acme. It does not bear the signature of Local 810.

There is another document which does bear the signature of 810. It is identical in all respects. We had two copies, and we can't locate the other one, but this is, in effect, a duplicate original of the document.

It just does not have 810's signature.

MR. BLYER: I have no problem. What Mr. Israel says, he will admit there is such a contract in effect.

JUDGE GIANNASI: Yes. At the appropriate time, I take it, you will stipulate that it is going into evidence and you will stipulate that that is the true agreement of the parties, and that will probably resolve any difficulties with the omission.

MR. BLYER: Yes, Your Honor.

MR. ISRAEL: Now, the subpoena also calls for any document which purports to provide for the resignation of Acme from the Wire Works Association, and any documents such as a certified or registered receipt showing the date of delivery.

Now, we have a copy of the document purporting to show resignation. There is no certified or registered receipt.

This is a copy of an August 11 letter from Acme to the Wire Works Association.

MR. BLYER: Thank you.

MR. ISRAEL: That, I believe, is complete compliance with the subpoena.

MR. BLYER: Thank you, Mr. Israel, that is correct.

There are some other items that I have asked of another party, but we can get to that a little later.

I am prepared to make an opening statement now.

JUDGE GIANNASI: Yes, I believe it would be useful to me and for the expeditious handling of the case if the parties would tend brief opening statements.

MR. ISRAEL: Your Honor, before we have opening statements, may I move for the separation of witnesses other than the parties themselves?

JUDGE GIANNASI: Any objection?

MR. BLYER: No, I have no objection.

JUDGE GIANNASI: I am going to grant that request. It is a reasonable request.

MR. BLYER: I understand we are permitted to have one representative from each side to assist us.

JUDGE GIANNASI: That is correct.

Let us go off the record.

(Discussion off the record.)

JUDGE GIANNASI: On the record.

MR. BLYER: General Counsel will show by a preponderance of all of the credible evidence the following:

For many years Local 455 has bargained with a multi-employer bargaining group known as the Wire Works Manufactorers Association, Incorporated, with regard to the production and maintenance employees employed by the employer members of that Association.

Also, for many years the Respondent, Acme Wire Works, Inc., has been a member of that Association and has bargained with Local 455 through it.

Now, the most recent contract, excluding the present one between the Association and Local 455, expired on June 30, 1975.

Negotiations for a new contract began on

June 16th of 1975.

A second bargaining session was held on June 24, 1975. ~~A~~t those two bargaining sessions, the Association Negotiating Committee consisted of a number of individual representatives of various employer members of the Association, including Respondent Acme's president, J. P. Batthaney.

No agreement on a new contract was reached as of June 30, 1975, and Local 455 began a strike against all the employer members of the Association.

That strike continues to day with regard to Acme.

Now, late in June of 1975, until mid-January, 1976, no negotiations between Local 455 and the Association occurred.

During this period of time, Local 455 requested the Association to meet and bargain withit, but the Association stated that it wanted to wait until the completion of the Allied negotiations before it met and bargained with Local 455 again.

Just for Your Honor's edification, the reference to the Allied negotiations, Allied, the full name is the Allied Building & Metals & Trades Industry, something to that effect. It is amulti-employer bargaining group which has been in existence for many years and which is compoed of a number of employers who are under contract with Local 455.

In other words, another Association that 455 has bargained with for many years.

Now, early January of 1976, Local 455 reached agreement on a new contract with the Allied group.

About a week later, Local 455 met with the Wire Works Association; negotiations on a new contract took place.

Present at this session for the Association were the same individuals that appeared at the prior two bargaining sessions, except for Acme's Batthaney.

During the course of this session, Local 455 asked where Acme was, and the Association's president told 455 that he would endeavor to find out.

Now, at the negotiation session a week later, after further negotiation, a new contract was reached and executed.

During the course of this session Local 455 inquired further about Acme and was given a letter that Acme had sent to the Association.

The letter provides for Acme's resignation from the Association. It is dated August 11, 1975.

Union Bresident Colavito inquired about the August 11th, 1975 date and Association official Bardy stated that the letter had just been received three days earlier and he confirmed that point at Mr. Colavito's request by indicating the same on the letter.

On the following day, Local 455's business agent, Matienzo, requested that Acme honor the Association contract, but it refused and continues to refuse to do so.

Now, at about the same time, Local 455 was informed by the Association that Acme had resigned from it. Local 455 also learned that Acme had signed a contract covering its production and maintenance employees with Local 810.

Under that contract, the employees of Acme had been required to become in main member of Local 810.

That contract was entered into despite Acme's obligation to bargain with Local 455, and despite the fact thatLocal 810 did not represent an uncoerced majority of the Association-wide bargaining unit.

Further, about two months after Local 455 signed the contract with the Association, it made an unconditional offer to return to work on behalf of Acme's striking production and maintenance employees.

To date, all of Acme's employees have not been so offered reinstatement. When I say "all of," I mean certain of Acme's employees have not been offered reinstatement despite the fact that the company has been operating throughout the strike.

In this connection, it should be noted that the strike began as an economic one and was caused by the failure to reach a new contract.

By Acme signing a contract with 810 and its withdrawal from the multi-employer bargaining and its failure to honor the contract, all in around January of 1976, the economic fact was prolonged by such unfair labor practices thereby converting it at that time into an unfair labor practice strike.

Thus, in late March, when the employees, through the Union, made an unconditional offer to return to work, they were unfair labor practice strikers and entitled to be reinstated.

Based on the above, we have submitted that Acme has unlawfully withdrawn from the multi-employer bargaining and I would like to cite in support of that position the cases of City Roofing at 222 NLRB 1119, Highway Billboards at 20622 and Retail Associates at 120 NLRB 388.

Further, it has unlawfully failed to honor the contract entered into between Local 455 and the Association.

In that connection I would like to cite

Associated Shower Door at 205 NLRB 677.

Further, it has unlawfully entered into a contract with 810 recognizing 810 as a representative of its production and maintenance employees, and in that regard the cases on point would be the ILGWU versus the NLRB 366 US 731,Komatz Construction -- that is not right, I withdraw that Komatz--Florida Automatic Sprinkler.

It is at two hundred something case and I don't have it here.

Wickes Corporation at 197 NLRB 860.

Clement Brothers at 165 NLRB 698.

Further, the fact that these agreements have union security provisions is also a violation of Section 8(a)(2) and (3) of the Act.

In that regard, Komatz Construction at 191 NLRB 846, and Interpage Corporation at 189 NLRB 132, and finally, the failure to reinstate strikers is also a violation of the Act.

In that regard Southwestern Pipe, Inc., at 179 NLRB 364, and Plastics Transporting at 193 NLRB 54, and Sieux Falls Stockyard Co., 208 NLRB 64.

Thank you very much, Your Honor.

Just one other point.

You made reference to the trial that we have completed in a case called Independent Association of Steel Fabricators and eighteen other employers involving Local 455 and Local 810.

As we pointed out, there really doesn't appear to be much connection between the two cases, except the Allied negotiations were important in both cases, and I don't see how you will need anything in that transcript to help you decide this case.

JUDGE GIANNASI: That is the Allied negotiations involved in the other case?

MR. BLYER: I don't think we are going to get into that. I hope not. And if so, I guess we will have to do it, but I don't think to the extent that we went into it there we would have to do it here.

JUDGE GIANNASI: Mr. Israel?

MR. ISRAEL: Your Honor, Acme submits to you that the evidence through testimony of the witnesses produced by General Counsel itself will show the following:

That prior to the expiration of the last agreement between Local 455 and the Association, there were two collective bargaining sessions and that Local 455 indicated to the Association that it was prepared to accept the Association as being its bargaining representative of only those employers for which the Association could produce and submit at the time signed authorizations, and that the Association did, in fact, procure from all of its employer members, except one, signed authorizations, and in the negotiations brought to the expiration date, did present them to the union, the exception being Acme refused to grant to the Association an authorization, and the union was so advised.

After the strike commenced on July 1, there were no negotiating sessions whatsoever between July 1 of '75 and mid-January of 1976, notwithstanding the fact that we had a strike of six and on-ehalf months duration in a terribly, terribly depressed industry, there were no collective bargaining negotiations at all.

During the period of the strike Acme, to the extent it might have been represented by the Association, advised the Association that it could not tolerate such a situation, and during the summer of 1975, advised the Association that if it had bargaining authority before, it was withdrawing it.

The Association, we believe, has no bylaws, no written rules, no regulations which require any resignation or withdrawal authorization to be in any particular form, and Acme was advised by a representative of the Association when it in fact did resign in the summer of 1975, and that verbally constituted the resignation since there were no bylaws which required anything else.

Acme was asked to supply a letter, so, in fact the letter could be handed by the Association to the union at such time as the bargaining would continue.

Acme did prepare a letter in August of 1975, but it never delivered that letter to the Association, because from that point on it never attended any Association meetings, and no dealings with the Association, and there were no further sessions between the Association and the Union.

When meetings were scheduled in January of 1976 between the Association and the Union, the Association advised Acme that it never received a confirming letter--that is all it was, a confirming letter--that it would like to have it, since it presented such a letter to the union prior to the first negotiating session six and a half months, and Acme had drawn and signed the letter many months before and simply never delivered it to the association. And, in fact, in January delivered this letter to the Association.

To the best of Acme's knowledge, the union, prior to the continuation or resumption of negotiations with the Association, was advised by the Association that the Association no longer represented Acme. It had not represented Acme since the summer of 1975, and the letter, Acme's resignation, which, I repeat, was not necessary, it wasn't necessary to put in writing, but nevertheless, was handed to the union.

Accordingly, we submit to you that the Association was not bargaining for and did not represent Acme in January when it consummated a collective bargaining agreement with Local 455.

Now, I agree with Mr. Blyer that the record in the prior case, the Independent association case is not necessary for your adjudication.

However, there are certain overlapping matters in the two cases. In addition to their being an association called Allied Building, Metal Trades Industry, there was another association, Independent Association of Steel Fabricators, Inc., which was the association involved in the case we tried this summer.

Allied historically has been the association, multi-employer association representing the majority of employers under contract with 455.

It is the oldest association and it has represented the largest employers, and traditionally, it has negotiated contracts which, in certain instances, set a pattern for industry, but in most instances, in effect, being the contract with the industry.

General Counsel's witnesses, I believe, will testify of the negotiations in this industry in the summer of 1975, bearing in mind that all contracts expire

June 30th for all employers, members of any of the three associations or unrepresented employers, all expire June 30th, and that the negotiations were done, had with Allied and to a far lesser extent Independent, and to no extent the association involved here, Wire Works.

The Allied negotiations took place in June, July, August, through the fall. There were heavy negotiations in late fall, early winter, and an offer was made by the Allied on or about December 5, 1975.

It was rejected out of hand by the leadership of Local 455, but as a result of being directed to take this matter back to the membership, Local 455 was forced to conduct a referendum among its members, and one month later, in January, the membership of Local 455 voted to accept the Allied offer which had been made one month earlier.

That settlement, in effect, became the settlement for the industry only after the Allied settlement was consummated did 455 resume its negotiations with the Wire Works Association and the Independent Association, and the settlement which has been made with Allied became the settlement for the industry.

Now, Acme submits to you, sir, that under any one of three theories, it could have resigned from the Wire Works Association in the summer of 1975.

It submits that under the impasse theory, and impasse was certainly reached in bargaining between the Wire Works Association and Local 455.

An impasse has been held to be that sort of circumstance which would justify withdrawal from multi-employer bargaining.

JUDGE GIANNASI: Do you have cases with you?

MR. ISRAEL: Yes. The Tulsa case is the principal case.

JUDGE GIANNASI: First of all, I take it that the issue is timely resignation. Everything else flows from that.

MR. ISRAEL: I believe so.

Tulsa is Tulsa Sheet Metal Works, 149 NLRB 120, and I would also point out that the Highway Billboards' case, which Mr. Blver mentioned to you also, looks to see if an impasse was reached.

In Highway Billboards, the Board said an impasse may not be reached, but it did not determine that impasse would not be a basis for withdrawal. It simply said that impasse was not reached in this case and therefore there could not be withdrawal for Highway Billboards because of the examination made in their case, which is a reaffirmation of the Tulsa Sheet Metal's case.

Tulsa also stands for the proposition that --

JUDGE GIANNASI: I don't think Tulsa supports you. Highway Billboards may address the issue, but I'm fairly certain Tulsa did not.

MR. ISRAEL: I certainly, having researched the case in connection with a prior case, I think it does.

Tulsa also deals with unusual circumstances and whereas there has never been a definitive ruling as to what one would constitute unusual circumstances, which would justify withdrawal from multi-employer bargaining, we would submit to you that in a situation where you have two bargaining sessions and nothing after that, that would be unusual circumstance which would justify what would otherwise be untimely withdrawal.

Third, as in the prior case--

2 JUDGE GIANNASI: In other words, your first argument is impasse?

MR. ISRAEL: Correct.

JUDGE GIANNASI: That is a matter of fact it existed in this case, and as a matter of law the Board recognizes that would be the circumstances which would permit withdrawal?

MR. ISRAEL: Correct.

JUDGE GIANNASI: Second of all, the circumstances in this case, namely, the hiatus in and of itself would be an unusual circumstance?

MR. ISRAEL: That is correct.

The third line of defense, and one which I concede has not been passed upon by the Board and I believe probably the first time it may be passed upon, may be in a prior case we had this summer, is what would be the effect of surface bargaining on the part of the union insofar as justifying a withdrawal from multi-employer bargaining by Acme in this case.

We submit that all that was engaged in here was surface bargaining on the part of the union and surface bargaining which constitutes defense practices and certain other violations should allow one to withdraw from multi-employer bargaining.

Now, the evidence with respect to surface bargaining will be as follows:

That at no time prior to July 1, which is the date of commencement of a strike, did the union even advise the Wire Works Association as to what its monetary demands were. There was never even a dollar amount put on the table.

Secondly, that with respect to the other major economic item in negotiations, normally, fringe benefits, pension funds, welfare funds, the union not only did not put a dollar amount prior to the strike on the table or in its written demands, moreover, it advised the Association with respect to the various funds, about six in this case, that it wasn't even prepared to bargain with the Wire Works Association on this matter, that the Wire Works Association would have to accept, have to accept without bargaining whatever settlement was negotiated between the union and the Allied Association.

JUDGE GIANNASI: Any charges filed against the union on this ground?

MR. ISRAEL: I don't know, but I believe not.

So that even on the impasse theory, the unusual circumstance theory, or on surface bargaining theory, we submit that Acme was legally and morally justified to withdraw from the Association.

JUDGE GIANNASI: You concede that other than these theories, that it was an untimely withdrawal?

MR. ISRAEL: Yes, bearing in mind the question arises as to whether in fact the union, in its first inance, recognized the Association as having bargained for Acme even in June, and we submit the evidence will indicate it rejected the Wire Works Association as a representative of Acme simply because Acme did not submit to the Association to be submitted to the union a written authorization, but assuming the union was accepting Acme as being part of the multi-employer group, subsequently on any one of the following three theories withdrawal would be justified.

Now, with respect to the other aspect of the case, which is the unconditional offer to return, we would simply point out that we believethe evidence will indicate that Acme had four employees at the inception of a strike.

The four employees did not work up to the period of time that the union signed a contract with the Wire Works Association.

However, two of the employees at about this time came back to work and worked prior to the time any offer at all was made.

We submit that the other two employees, in fact, either completely left the industry or in the case of one, was ill, is ill, and never was in any position and never requested that he come back to work, and in fact could not come back to work.

So that with respect to the four employees involved, or of the four employees who might be involved, because we don't know exactly who the General Counsel is claiming, two in fact have worked, one has disappeared and one never was, and is not in a position to ever come back to work.

So that to the extent there may have been an offer to return, it was a sham and the union knew this to be.

Any offer to return was merely a pro forma self-serving letter sent in by the union. That is what Acme will show, Your Honor.

JUDGE GIANNASI: Let me get this straight.

Is your evidence going to show that your client notified the union of its withdrawal from the multi-employer unit?

MR. ISRAEL: No notification independent of notification given by the Association.

JUDGE GIANNASI: In other words, the only notification that was given was to the Association?

MR. ISRAEL: And thereafter any notification that the Association would have given the union would have been the notification. There would be no notification from our client directly to the union.

JUDGE GIANNASI: All right.

Second of all, I want to get this straight so I will ask again, is it your position that your notification or your resignation was untimely, absent these three specified reasons, which would permit withdrawal?

MR. ISRAEL: Yes, with one reservation.

It is our contention, in the first instance, we were not part of the multi-employer bargaining but because the union did not accept us as such, but if you were to find against us on this ground and say that we were--

JUDGE GIANNASI: Then I would have to reach your three --

MR. ISRAEL: Then you would have to reach any of the three grounds, or at least one.

JUDGE GIANNASI: I think I understand.

MR. KREISBERG: I don't believe I have anything to add to what Mr. Israel has already said.

JUDGE GIANNASI: All right, very good.

I think we are ready to start.

MR. BLYER: Mr. Colavito.

Whereupon,

WILLIAM COLAVITO

called as a witness, having been first duly sworn by Judge Giannasi, was examined and testified as follows:

JUDGE GIANNASI: Give your full name and address.

THE WITNESS: William Colavito, 3000 Bronx Park East, Bronx, New York.

DIRECT EXAMINATION

BY MR. BLYER:

Q Mr. Colavito, what position do you hold with Local 455?

A I'm the president of the local.

Q How long have you held that job?

A Since 1964.

Q Are you familiar with an employer group known as Wire Works Manufacturers Association?

A Yes, I am.

Q How do you know about them?

A Well, I have been in the local over 40 years and I have dealt with them back in the early 40's, and since I have been in office in 1964 on.

Q In what capacity did you deal with them in the early 40's?

A I was part of a negotiating, part of the union negotiating committee.

Q Would that be Local 455?

A Yes.

Q And since you have been president have you had any dealings with the Wire Works Manufacturers Association?

A Yes.

Q What dealings have you had there?

A In negotiations, sometimes grievances.

Q And are you familiar with a company called Acme Wire?

A Yes.

Q How do you know Acme?

A As part of the Association.

Q How long do you know them as being part of the Association?

A At least since 1964.

Q Now, has Local 455 had collective bargaining agreements with the Wire Works Manufacturers Association?

A Yes.

Q For how long would you say you have had collective bargaining agreements covering their production and maintenance employees?

A At least going back into the 40's.

Q Now, putting aside the most recent contract, prior to that one, when did that contract expire?

A June 30, '75.

MR. BLYER: Excuse me one moment, Your Honor.

JUDGE GIANNASI: Off the record.

(Discussion off the record.)

JUDGE GIANNASI: On the record.

MR. BLYER: Your Honor, I would like to offer a document and have it marked first as General Counsel's Exhibit No. 2.

There are two parts to this document.

Perhaps we can mark the booklet as 2-A and the four-page document as 2-B; would that be all right?

JUDGE GIANNASI: That will be fine.

(A booklet and a four-page document were marked respectively General Counsel's Exhibits No. 2-A and 2-B for identification, of this date.)

MR. BLYER: Can we stipulate this in evidence, gentlemen?

MR. KREISBERG: Yes.

JUDGE GIANNASI: Read a stipulation.

MR. BLYER: I propose the following stipulation:

That General Counsel's Exhibits marked as 2-A and 2-B be accepted into evidence.

JUDGE GIANNASI: Any objection?

MR. ISRAEL: No objection.

MR. KREISBERG: No objection.

JUDGE GIANNASI: General Counsel's Exhibits 2-A and 2QB will be received into evidence.

(General Counsel's Exhibits 2-A and 2-B for identification received in evidence, of this date.)

JUDGE GIANNASI: This is the latest collective bargaining agreement expiring June 30th, 1975, between the union and the Wire Works Manufacturers Association; is that correct?

MR. BLYER: Yes, except for one point. It is not the latest because there has been --

JUDGE GIANNASI: Yes, I understand.

MR. BLYER: It is the one most prior to--

JUDGE GIANNASI: June 30, 1975?

MR. BLYER: Right.

BY MR. BLYER:

Q Did there come a time, Mr. Colavito, that a letter was sent to the Wire Works Association with regard to the termination of that contract that has just been put into evidence?

A Yes.

Q And to your knowledge was that letter received?

A Yes, it was.

MR. BLYER: Your Honor, I would like to have this marked as General Counsel Exhibit No. 3.

(Document marked General Counsel's Exhibit No. 3 for identification, as of this date.)

MR. BLYER: Would you please mark this as General Counsel's Exhibit No. 4?

(Document marked General
Counsel's Exhibit No. 4
for identification, of
this date.)

BY MR. BLYER:

Q Mr. Colavito, I show you what has been marked for identification as General Counsel's Exhibit No. 3.

Can you tell me what that is?

A It is a letter addressed from our local to the Wire Works Association, notification of desire to terminate the contract.

MR. BLYER: Your Honor, I offer that as General Counsel's Exhibit No. 3. It is dated April 8th of 1975.

MR. ISRAEL: No objection.

MR. KREISBERG: No objection.

JUDGE GIANNASI: All right, General Counsel's Exhibit 3 will be received into evidence.

(General Counsel's Exhibit
No. 3 for identification
received in evidence, of
this date.)

Q Now, in connection with General Counsel's Exhibit No. 3, I show you what has been marked as General Counsel's Exhibit No. 4.

First of all, can you tell me how you send out General Counsel's Exhibit 3, by what form of mail?

A Certified mail, return receipt.

Q With regard to General Counsel 4, can you identify that?

A It is the receipt.

Q For what?

A Delivered to Bellis Wire, the notification of termination.

Q You mentioned it went to Bellis Wire, General Counsel 3?

A Historically, it has been the address by which the Wire Works Association sent their mail and communications.

MR. BLYER: Your Honor, I offer into evidence G. C. 4.

MR. ISRAEL: No objection.

JUDGE GIANNASI: G. C. 4 is received into evidence.

(General Counsel's Exhibit No. 4 for identification received in evidence, of this date.)

Q Now, did there come a time thereafter that the union sent further correspondence to the Wire Works Manufacturers Association?

A Yes, it did.

MR. BLYER: Your Honor, I would like this marked as G. C. 5 for identification.

(Document marked General
Counsel's Exhibit No. 5
for identification, of
this date.)

Q Mr. Colavito, I show you what has been marked for identification as General Counsel Exhibit No. 5. Can you identify thatdocument?

A It is a letter addressed from our office to the Wire Works Association asking for a list of the employer members of theirs that they intend to represent in coming negotiations.

Q Do you recognize the signature on the bottom of that paper?

A Yes. It is John Zito, the financial secretary of the local union.

Q Do you recognize that to be his signature?

A Yes.

Q How long has Mr. Zito held that position?

A Since 1964.

Q Was it continuously from '64 until now?

A Yes.

JUDGE GIANNASI: What is the date of that letter?

MR. BLYER: May 21, 1975.

I offer this one as General Counsel Exhibit 5.

JUDGE GIANNASI: Any objection?

MR. ISRAEL: No objection.

MR. KREISBERG: No objection.

JUDGE GIANNASI: All right, General Counsel Exhibit 5 will be received in evidence.

(General Counsel Exhibit No. 5 for identification received in evidence, of this date.)

BY MR. BLYER:

Q Now, with regard to General Counsel's Exhibit No. 5, Mr. Colavito, did the union get a letter in response?

A Yes, we did.

MR. BLYER: Your Honor, I would like this marked as General Counsel's Exhibit No. 6.

(Document marked General Counsel's Exhibit No. 6 for identification, as of this date.)

Q Mr. Colavito, I show you what has been marked for identification as General Counsel Exhibit No. 6, a two-page document dated May 29th of '75.

Can you identify that?

A It is a letter from the Wire Works Manufacturers Association in answer to our previous letter, and they list, they say -- they list who the Wire Works Manufacturers' representatives are, Wire Works representatives.

MR. BLYER: Thank you, Mr. Colavito.

Your Honor, I offer this as General Counsel Exhibit 6.

MR. ISRAEL: No objection.

JUDGE GIANNASI: All right, General Counsel's Exhibit 6 is received into evidence.

(General Counsel's Exhibit No. 6 for identification, received in evidence, of this date.)

JUDGE GIANNASI: May I see it?

Is this a copy of the letter that was received?

THE WITNESS: I really don't know.

MR. BLYER: Your Honor, here is the original. You were looking at the copy.

JUDGE GIANNASI: All right.

BY MR. BLYER:

Q Mr. Colavito, were you involved in any collective bargaining negotiations with the Wire Works Association before June 30, 1975, you personally?

A In 1975?

Q Yes.

A No.

Q You personally.

A No, I was not.

Q Now, can you tell me what happened on

June 30th of 1975?

A All the shops in the industry that had not signed the agreement went on strike July 1st.

Q Would that include--

A It includes the Wire Works Association employer members.

Q And did you strike any other employer members of any other association?

A Yes, the Allied Building, Metal Industries, all their shops that they had as representing all the independent employers who were not part of any association or had not signed an agreement, and all the employers of the Steel Fabrication, Independent Association of Steel Fabrictors.

Q Now, just very briefly, in addition to the Wire Works Association, what other associations was Local 455 bargaining with or under contract, or had Local 455 bargained with as of June 30, 1975?

A Associations?

Q Yes.

A The Allied Building Metal Industries, and a newly formed association called the Independent Steel Fabricators' Association.

Q In addition to bargaining with those two associations, plus the Wire Works Association, you mentioned that there was some bargaining also going on with independent employers.

A Yes.

Q Approximately how many independent employers was the union bargaining with?

A Well, at least sixty or so, at least.

Q How many?

A About sixty at least.

Q How long had the Allied group been in existence, the Allied multi-employer bargaining group?

A Going back into the 30's at least. They have had predecessors in the 20's.

Q Historically, had they played any role with regard to the other contracts that Local 455 entered into?

A Yes, they have, until '64, I would say, that they had been the major association and played the dominant role year by year.

Since '64, it was sometimes they did and sometimes what was negotiated with the independent employers became the dominant feature or set the pace for the particular year.

The Wire Works have historically always followed the Allied Association, never settled before, always after.

Q That has been the case since you have been in office, since '64?

A Since back in the 40's.

Q Back in the 40's?

A Yes.

Q When you were on the union negotiating committee?

A Yes.

Q I'm not sure if I understood you. Did you say before '64 it was always the Allied that was dominant, after '64?

A One year it might be the Independent Employers, or we worked an agreement with Independent Employers, and whatever was negotiated with them became pretty much the pattern with the Allied.

Sometimes it was the Allied and the Independent followed the Allied.

Q When you referred to independent in your last answer, you mean independent employers?

A Yes, independent firms.

Q Just to further clarify the record, the reference to the Independent Association of Steel Fabricators, a multi-employer bargaining group, when did you first begin negotiations with them?

A For the first time in June of '75.

Q So they weren't around back in '64?

A No.

Q Now, on January 13th of 1976, do you recall being engaged in any collective bargaining negotiations?

A Yes, with the Wire Works Association.

Q Where did you meet?

JUDGE GIANNASI: I didn't catch the date.

MR. BLYER: January 13, 1976.

Q Do you recall where the negotiations took place?

A Out by La Guardia Airport; I think it was the Sheraton-Tenney Motel.

Q On behalf of the union who was there?

A Myself, Matienzo, business agent, and Hernandez, an executive board member.

Q And on behalf of the Association who was there?

A I don't recall the names. There were representatives from Bellis, I think Bardy, and Kennedy were there.

Estey was there, Acorn was there.

Q Acorn?

A Yes.

Q Do you remember any others there?

A There were others, but I'm not sure I know their names.

Q Can you tell me what happened at this January 13, 1976 negotiating session?

A They asked some clarifying information around some of the clauses that were part of the stipu- ion that was circulating at that time.

JUDGE GIANNASI: Part of it was circulated?

THE WITNESS: Stipulation, an estimate, an agreement. There was an agreement that was being as signed by independent firms and they asked some questions about that.

Of course, we had presented that to them.

They asked some questions about the Allied Building Metal Industries negotiations, and we had just come out of that.

They gave us a draft of a proposal that they wanted on a subcontracting clause and we went over the various points on the stipulation and we made some changes and we set up another meeting.

Q In order to clarify the record, let me just go back a moment at this time to January 13, 1976.

What was the status of your collective bargaining negotiations with the Allied group?

A The Allied contract had been settled and signed early January.

3 Q That answers my question.

Now, what you had agreed to with Allied on the 13th, did you offer that to the Wire Works Association?

A Not exactly, no.

Prior to the Allied settlement, we had settled with some fifteen independent firms. That became the basis for a settlement with the Allied Association, most of that. What we offered the Wire Works Association was the settlement with the Allied, plus all the terms and conditions we had settled with fifteen independent firms applicable to the Allied settlement. That was the basis ofthe settlement we offered the Wire Workers Association.

Q Now, did there come a time after the 13th that again you and other union officials met with the negotiating committee for the Association?

A Met on the 19th of January.

Q Where was that?

A The same place.

Q Who was present on behalf of the union?

A The same three people.

Q On behalf of the Association?

A There was a change of a face or two, but I don't remember who they represented, what company they represented.

Q Who was the major spokesman on the 13th for the Association?

A Kennedy and Bardy, I think, you know, but they all spoke, all the employers did talk at one time. It wasn't a matter of just one spokesman for the Association.

Q On the 19th were Kennedy and Bardy there?

A I believe so.

Q Tell me what happened with regard to negotiations on the 19th?

A Well, we cleaned up all the changes like it was agreed to by both parties.

We wrote them down on a stipulation and we signed the stipulation.

MR. BLYER: Your Honor, I would like to have this marked as General Counsel Exhibit No. 7.

(Document marked General Counsel's Exhibit No. 7 for identification, of this date.)

Q Mr. Colavito, I show you what has been marked for identification as General Counsel's Exhibit No. 7.

Can you identify that document?

A Yes. This is the stipulation that was agreed to on the 19th.

Q With regard to this document, was this the document that was submitted to the Association on the 13th as well?

A With the exception of the modification that is in it written in by hand.

Q What are you talking about when you say "with the exception of the written in modification by hand"?

A Down at the bottom of the page the dates as well as the changes that were modified, the stipulation or the contract.

Q What part of the page is that?

A The bottom of the page.

Q What side, the left-hand?

A Left-hand corner.

Q Do you recognize the signatures at the bottom of the page?

A Yes.

Q Whose signatures are they?

A Myself for the union and Kennedy for the Wire Work Association.

MR. BLYER: Your Honor, I offer this as General Counsel's No. 7.

JUDGE GIANNASI: Any objection?

MR. ISRAEL: No objection.

JUDGE GIANNASI: General Counsel's Exhibit 7 will be received into evidence.

(General Counsel's Exhibit No. 7 for identification received in evidence, of this date.)

Q Now, do you recall anything else being asked at this January 19th session?

A Atthe time we concluded negotiations I think it was either Kennedy or Bardy had told me that Acme -- they had received a letter from Acme saying that they were withdrawing from the Association and they had just received it.

MR. BLYER: Your Honor, I would like this marked as General Counsel's Exhibit No. 8.

(Document marked General Counsel's Exhibit No. 8 for identification, of this date.)

Q Mr. Colavito, I show you what has been marked for identification as General Counsel's Exhibit No. 8.

Can you identify that, please?

A This is the letter I was referring to. One of the officials of the Association told me that they had just received this and had some writing on this, which

I asked him to write on there, that if that was true, and he just received it, he should put down he just received it, and he wrote it down himself and signed it.

Q Whom did you have this conversation with?

A Bardy.

Q Did he tell you what date he had received this letter?

A He said, "I just received it," and then he put down the date he received it.

Q Now, on this, where on this letter did he put this down?

A At the bottom on the right-hand corner.

Q With regard to the letter, what is the date of the letter?

A The letter is August 11, 1975, and he wrote down he received it --

MR. ISRAEL: Objection, Your Honor. It is not in evidence at this point.

MR. BLYER: Your Honor, I offer this as General Counsel's Exhibit 8.

JUDGE GIANNASI: Any objection?

MR. ISRAEL: Yes. To the extent the letter is a letter from Acme, I have no objection, Your Honor.

The additional writings I object to. They are not binding upon Acme, and it is hearsay.

JUDGE GIANNASI: Well, was that written in your presence?

THE WITNESS: Yes.

JUDGE GIANNASI: And it was written by whom?

THE WITNESS: Mr. Bardy.

JUDGE GIANNASI: Is that his signature that appears on there?

THE WITNESS: Yes.

JUDGE GIANNASI: Did he sign it?

THE WITNESS: He wrote it and signed it.

JUDGE GIANNASI: I am going to receive General Counsel's Exhibit 8 into evidence in its entirety.

(General Counsel's Exhibit No. 8 for identification received in evidence, of this date.)

JUDGE GIANNASI: You may cross-examine, of course, on the written aspect of the letter and all the circumstances surrounding its presentation to the witness.

Is that when it was given to you, on the 19th?

THE WITNESS: Yes.

MR. BLYER: You were looking at the copy again, Your Honor. This is the original.

JUDGE GIANNASI: Yes.

BY MR. BLYER:

Q Now, up until this time, Mr. Colavito, had you heard anything with regard to Acme being desirous of withdrawing from the multi-employer bargaining from the Association?

A No, this was the first I heard it.

Q Had your union, to your knowledge, ever requested of Acme that they withdraw from that group?

A No, it has not.

Q At any time before this date that you received this letter, had Acme requested bargaining with Local 455 on an individual basis?

A No, it did not.

Q Had any bargaining on an individual basis with Acme and the union, in fact, taken place?

A No.

Q Did there come a time in late March of 1976, that the union had occasion to send further correspondence to Acme?

A Yes.

MR. BLYER: May I have this marked, please, as G. C. 9?

(Document marked General Counsel's Exhibit No. 9 for identification, of this date.)

Q Mr. Colavito, I show you what has been marked for identification as General Counsel's Exhibit No. 9.

Can you identify that? Just tell me what it is without explaining it.

A It is a letter that we sent to Acme Wire Works.

Q I note with regard to that letter it talks about an enclosure.

To your knowledge, was there an enclosure of what is stated in that letter?

A Yes, there was.

MR. BLYER: Your Honor, I offer G. C. 9 in evidence.

MR. ISRAEL: No objection.

JUDGE GIANNASI: General Counsel's Exhibit 9 is received into evidence.

(General Counsels' Exhibit No. 9 for identification received in evidence, of this date.)

JUDGE GIANNASI: I have a question at this time.

Is this the next contact that you had, written or otherwise, with Acme?

THE WITNESS: Well, out in the field the

business agents and the striking people are in touch with the shops at the shop level, but my own office contact would be this, yes.

JUDGE GIANNASI: All right.

MR. BLYER: May we have this marked as G. C. 10?

(Document marked General CounselExhibit No. 10 for identification, of this date.)

Q Now, by what form of mail, Mr. Colavito, was G. C. 9 sent out?

A Certified mail.

MR. BLYER: Your Honor, I think the parties are prepared to stipulate G. C. 10 into evidence, which isproof of receipt of G. C. 9, the registered receipt.

JUDGE GIANNASI: Is that correct?

MR. ISRAEL: Yes.

JUDGE GIANNASI: General Counsel's Exhibit 10 is received into evidence.

(General Counsel's Exhibit No. 10 for identification received in evidence, of this date.)

Q Now, did there come a time at about the same time that G. C. 10 was sent out that the union sent out another letter in a separate mailing to Acme?

A Yes.

MR. BLYER: May I have this marked as G. C. 11 for identification?

(Document marked General Counsel's Exhibit No. 11 for identification, of this date.)

Q Mr. Colavito, I show you what has been marked for identification as General Counsel's Exhibit No. 11.

Can you identify that, please?

A Yes. A letter sent March 29th to Acme Wire.

Q By what form of mail was that sent?

A Certified mail.

MR. BLYER: I offer this as G. C. 11, Your Honor.

MR. ISRAEL: No objection.

JUDGE GIANNASI: General Counsel's Exhibit 11 will be received into evidence.

(General Counsel's Exhibit No. 11 for identification received in evidence, of this date.)

MR. BLYER: With your permission, Your Honor, I would like this marked as G. C. Exhibit 12.

(Document marked General Counsel's Exhibit No. 12 for identification, of this date.)

MR. BLYER: May we go off the record, Your Honor?

JUDGE GIANNASI: Yes.

Off the record.

(Discussion off the record.)

JUDGE GIANNASI: On the record.

MR. BLYER: Your Honor, I have been advised we can stipulate G. C. 12 into evidence as being evidence of the fact that G. C. 11 was received. It is a registered receipt or certified receipt, proof of service.

JUDGE GIANNASI: It shall be received into evidence.

(General Counsel's Exhibit No. 12 for identification received in evidence, of this date.)

Q Mr. Colavito, at any time did the union receive unfair labor practice charges with regard to the negotiations which were occurring between Local 455 and the Wire Works Association?

A No.

Q At any time across the table, either on the 13th or the 19th when you were present, were you accused by anyone of bargaining in bad faith?

A No.

MR. BLYER: Your Honor, that is all I have for this witness.

Thank you.

JUDGE GIANNASI: You may cross-examine.

CROSS-EXAMINATION

BY MR. ISRAEL:

Q Mr. Colavito, I show you General Counsel's Exhibit No. 11 and ask you, will you just read the same to yourself, please?

A Yes.

Q What were the names of the Acme employees that you desired to be returned to work?

A I wouldn't know them.

Q Do you know how many employees Acme had at the time of the strike?

A I know it was less than half a dozen.

Q Pardon?

A It was less than half a dozen.

Q Do you know the names of any of these employees?

A No, I wouldn't know them.

Q At the time you sent this letter, do you know if any of these employees were in fact then working for Acme?

A I wouldn't know.

q Do you know if any of the Acme employees had been employees at the time of the strike had left the industry?

A Left the industry? I wouldn't know.

Q Do you know if any of the employees had become ill in the intervening period?

A I have heard but I can't be sure because there are a lot of shops, over 150 shops, so I can't be sure to pinpoint.

Q Is it possible at the time you sent this letter on March 29th that all of the employees of Acme who had been employees on June 30, 1975, who were able to work had already gone back to work?

A I don't think so because the office is in touch with the field and there is some communication going on.

Q Do you know Mr. Dougherty, Daniel Dougherty?

A I would know people by faces. I wouldn't necessarily know them by name.

Q Do you know the name Daniel Dougherty?

A It is a common name so I'm not sure if I know him personally or have spoken to him or not.

Q You don't know him to be an employee of Acme, do you?

A I wouldn't know.

Q Do you know Mr. Manuel Diaz?

A The name is familiar. Could be one of our members.

Q Do you know if he was an employee of Acme?

A I wouldn't know.

Q Do you know if either of these two employees were working at the time you sent your March 29th letter?

A I wouldn't know. It is an office letter which I signed covering a number of shops at the time.

Q Do you know Mr. Martin Hammel?

A No. By the name I couldn't.

Q Sorry?

A By name I don't.

Q Do you know Mr. Frank Paradise?

A By name I wouldn't recognize.

Q So is it true you can't name any particular Acme employee who had been an employee on June 30, who was not working when you sent this March 29th letter?

A We have 3,000 employees, so it is hard for me to remember their names, 3,000 members.

Q Mr. Colavito, do I understand you to say you did not participate in the two meetings with the Wire Works Association prior to July 1?

A No, I did not.

Q And the next meeting you participated in was on January 13, 1976?

A That is correct.

Q As a matter of fact, is it not a fact that there were no meetings between the union and the Wire Works Association between July 1 and January 13, 1976?

A I wouldn't be sure of that because the business agents were in touch with the employers.

If there were no meetings established, I didn't participate in any meetings.

Q But you don't know of your own knowledge whether there were or were not meetings?

A No.

Q Now, during the period July 1, 1975, to January of '76, you personally were involved in other negotiations in the industry, were you not?

A Yes.

Q You were the chief representative of the union in the negotiations with the Allied Association, were you not?

A That is correct.

Q Now, how many meetings were there between the union and Allied in June of 1975?

A About four, five; something like that.

Q And you were the chief spokesman for the union in the negotiations with the Independent Association of Steel Fabricators, were you not?

A Yes.

Q And similarly, there were four or five meetings in June with that association?

A About four meetings, yes.

Q Were there any meetings between the union and either association in July?

A There was one short meeting with the Allied in July.

Q Now, there was one meeting between the union and the Independent in August, was there not?

A Independent Association?

Q Yes.

A I think there was, yes.

Q How many meetings were there between the union and the Allied Association in August?

A Perhaps one.

Q Is it fair to say there were approximately four or five additional meetings between September and December between the union and the Independent Association?

A Between --

Q The union and the Independent Association, between September and January 1, 1976.

A Four or five; maybe less, less than that.

Q What number would you say?

A Maybe three.

Q How many meetings were there in this period between the union and the Allied? That is, between September and January 1?

A December? There were a couple in September and a couple in October.

Q Now, the meetings, any in November?

A No.

Q Any in December?

A I said one in December.

Q Was there a time when a representative of the International came down from Washington to participate in the local's negotiations with Allied?

A Yes.

Q What period of time was that?

A September and October.

Q Were those meetings concentrated in the one particular period of time?

A Yes, they were.

Q Did the Allied make a offer to the union in December?

A That was--there was an offer in the early part of December, yes.

Q Was this an offer that was made at a negotiating session between the union and Allied?

A It was, I guess, what you would call-- there was a meeting called by the Federal Mediation Service and they brought in an offer and that was it, a take-it-or-leave-it offer.

Q That offer was rejected by the executive board of the local?

A Yes, it was.

Q Subsequently, that offer was put to a vote of the membership in January?

A No. It was put to a section of the membership.

Q That is the membership who were employees of the members of Allied?

A Yes.

Q Was that in January?

A That was through a mail referendum, yes.

Q Pardon?

A Through a mail referendum.

Q In January?

A It went out over the holidays so it was December, January, yes.

Q That was accepted by the membership?

A Yes.

Q Did a representative of the International participate in any negotiating sessions with the Wire Works Association?

A No.

MR. ISRAEL: I have no further questions.

MR. KREISBERG: No questions.

JUDGE GIANNASI: Any redirect?

MR. BLYER: No.

JUDGE GIANNASI: Did you have any contact with anybody from the Wire Works Association aside from these letters that you have identified and that are in evidence here?

THE WITNESS: No.

JUDGE BLYER: Between June 30th of '75, and January, when you started negotiations --

THE WITNESS: No, I didn't, but the business agents in the office would during that period of time.

JUDGE GIANNASI: Did you receive any requests to bargain from the Wire Works Association during that time?

THE WITNESS: No, we did not.

Historically, they have always waited for the Allied, the Wire Works Association has always historically waited until the Allied settled, and then sat down with us. That historically has always been so in my time.

However, our people do approach them and see if we can get a negotiation to break that pattern, but we have never been successful in getting to negotiate on an individual basis.

They have always waited for the association since I have been around.

JUDGE GIANNASI: All right. I have nothing further.

Does that prompt any questions?

MR. BLYER: No.

JUDGE GIANNASI: You may be excused.

(Witness excused.)

Whereupon,

WILLIAM MATIENZO

called as a witness, having been first duly sworn by Judge Giannasi, was examined and testified as follows:

JUDGE GIANNASI: Give your name and address to the reporter.

THE WITNESS: My name is William Matienzo, M-a-t-i-e-n-z-o. My home address is 9140 Lamont Avenue, Elmhurst, Queens 11373 zip.

DIRECT EXAMINATION

BY MR. BLYER:

Q Mr. Matienzo, what position do you hold with

Local 455?

A I'm business agent for Local 455.

Q How long have you been a business agent for Local 455?

A Since July 1 of 1970.

Q What jurisdiction do you cover?

A I cover Brooklyn, Manhattan, Staten Island, and I have one or two shops in Queens.

Q Where is Acme located?

A In Brooklyn.

Q Is that one of the shops that you service?

A I've serviced that shop, yes.

Q For how long have you been servicing that shop?

A Since I have had this position in 1970.

Q Now, before 1970, did you ever have any role in negotiations on behalf of the union?

A Yes.

Q Starting when?

A I believe either '63 or '65, I was on the executive board of the union and I participated in some negotiations with the Wire Works Association.

Q At that time, either in '63 or '65, was Acme part of that group?

A Yes.

Q Did there come a time in June of 1975 that you were engaged in negotiations with the Wire Works Association?

A Yes, I was.

Q What do you recall as being the first date that negotiations took place?

A On June 16, 1975.

4 Q Where did that negotiating session take place?

A We had it at the Sheraton-La Guardia Hotel in Elmhurst, and we had it in Parlor B, I believe.

Q Who was there on behalf of the union?

A Myself and Frank hernandez, an executive board member of the union.

Q On behalf of the employers?

A Well, to my recollection, it was Mr. Thomas Kennedy, Mr. Jerry Bardy, Vic Estey, Joe Batthaney of Acme, Don Muchtin of General Wire, Henry Kubanek of City Wire, and Mr. Hal Davis of Acorn was present.

That is my best recollection.

Q Who was chief spokeman on behalf of the union?

A Well, I was at that session.

Q On behalf of management?

A Thomas Kennedy.

Q Can you tell me what happened, please, at this first negotiating session on June 16, 1975?

A Well, we had union proposals for the new contract and we presented, you know, we went over the proposals.

There were some other things we discussed about that.

I'm not sure of the order we discussed it because we had another thing that we were talking about at that time, too, in regard to Acorn Wire Works.

Q Previously, what was your discussion about Acorn?

A Well, we didn't -- we informed the Wire Works Association that we did not recognize him as part of the group because he joined their group, as we said, too late to be part of the bargaining, because we--when we asked for an original letter of intention from the Wire Works Association, who your group were, Acorn wasn't part of it, and I understand that the business agent from the Bronx was -- already had one or two meetings with Acorn.

Q How was that ultimately resolved? Was Acorn included or not included?

A Well, I didn't really recognize them, but I didn't say I refused to talk, you know; just let him sit there and we continued on talking anyhow. I just stated my position at that time.

Q Ultimately how was it resolved?

A We let him come in with the group ultimately, yes.

Q Aside from this discussion about Acorn, you said you submitted your proposals at this time.

Was there any discussion at this first meeting with regard to your proposals?

A There was some. They just went over them. There wasn't time to study them, but we just had a general discussion of the economic picture of the industry and all this and that.

Q What was said about the economic picture at that time?

A Well, not too good, pretty depressing.

Q Was that echoed by one side or both sides?

A Well, that was their viewpoint, not mine. I tried to be optimistic.

Q Now, at this first session, did the Association give any proposals to you?

A No.

Q Did they make any mention of any proposals they were going to submit?

A Yes. They said that they would give us some papers of their viewpoints, of what they needed, to, as they call it, to survive the industry.

MR. BLYER: Your Honor, I would like this marked as General Counsel's Exhibit No. 13 for identification.

(Document marked General Counsel's Exhibit No. 13 for identification, as of this date.)

Q Mr. Matienzo, I show you what has been marked for identification as General Counsel's Exhibit No. 13.

Can you identify that?

A Yes.

Q What is that?

A These are the proposed changes of the agreement for negotiations. These are the union's proposed changes for bargaining, you know, for bargaining purposes.

Q Was this the document that you gave to the Association on the 16th of June?

A Well, I believe that I gave Mr. Kennedy one sooner than that. He wanted to study that, and then when I came with some more during that meeting, everybody had, and then we gave them out to everybody.

Q Is that the document you gave to everybody on the 16th?

A Yes.

MR. BLYER: Your Honor, I offer this as G. C. 13.

MR. ISRAEL: No objection.

JUDGE GIANNASI: G. C. Exhibit 13 is received into evidence.

(General Counsel's Exhibit No. 13 for identification received in evidence, of this date.)

Q Now, at this first bargaining session, Mr. Matienzo, you already told us that Mr. Batthaney of Acme was present.

Do you recall him participating during the session?

A What do you mean? I don't understand you.

Q Was he there?

A Yes, he was there on the first meeting.

Q Did he speak?

A What?

Q Did he talk?

A Yes.

Q Did he discuss matters?

A Yes, very nominal, you know. We, more or less -- it wasn't a formal session. We'd go around the table and while there was a spokesman and ours for the union, anybody who had anything to say came up and said -- I'm pretty sure he must have said some.

MR. ISRAEL: Objection, Your Honor; move to strike.

JUDGE GIANNASI: Strike what?

MR. ISRAEL: The entire answer. He says, "I'm pretty sure," or "I assume."

JUDGE GIANNASI: Well, you can cross-examine. He is giving a narrative in response to the question.

I think that we want you to be more specific as to what Mr. Batthaney said and what you said in response, and what the union said in response, but certainly you may cross-examine.

Q Mr. Matienzo, do you recall any subjects that Mr. Batthaney directly spoke on?

A No, I couldn't.

Q Do you believe he spoke, though, on certain subjects?

A I do believe he did, yes.

Q But you can't recall which?

A I can't recall which.

Q At any time during that session did Mr. Batthaney tell you or mention to anybody that he did not consider himself as being part of this multi-employer bargaining group, the Wire Works Association?

A No.

Q Did he ever offer to bargain with the union at this time or any other time on an individual basis, apart from the bargaining association?

A No.

Q Did there come a time after the June 13th meeting that the union received a document from the Association?

JUDGE GIANNASI: That was June 16th.

THE WITNESS: You said the 13th.

Q I'm sorry. Sometime after June 16th, that the union received a document from the Association?

A After, yes, we received something after the 16th of June, yes.

MR. BLYER: May I have this marked as General Counsel's Exhibit No. 14, please?

(Document marked General Counsel's Exhibit No. 14 for identification, of this date.)

Q Mr. Matienzo, I show you what has been marked for identification as General Counsel's Exhibit No. 14.

Can you identify what that is?

A Yes. This is a document handed to us by the Wire Works Association, you know, about the trouble, about the problem they had, you know, to change things, and also, if I recollect --

Q You don't have to describe the document.

Just tell me who gave it to you.

A Well, I have a copy of this. I believe this was mailed to the union. I had a copy. This was sent to the union.

I had a copy sent to me on this.

Q Do you recognize the signature on the last page?

A Yes, Thomas Kennedy.

Q Who is Mr. Kennedy?

A He is the president of the Wire Works Association, if that is his title now.

MR. BLYER: Your Honor, I offer this as General Counsel's No. 14.

MR. ISRAEL: No objection.

JUDGE GIANNASI: G. C. 14 is received into evidence.

(General Counsel's Exhibit No. 14 for identification received in evidence, of this date.)

Q Mr. Matienzo, do you recall a second bargaining session on June 24th of 1975?

A Yes.

Q Where did this one take place?

A The same, at the La Guardia Hotel again. This was in a room--I think it is the third or fourth floor, I'm not sure.

Q Who was present on behalf of the union at this meeting?

A Myself and Mr. Frank Hernandez on behalf of the union.

Q Who was the major spokesman in behalf of the union?

A I was.

Q Who was there in behalf of the Association?

A Mr. Thomas Kennedy again, Jerry Bardy, Henry Muchtin, Joe Batthaney, Jr., Mr. Hal Davis again and Mr. Rick Estey--I'm not sure which--I think it was Mike Kubanek that came this time from Standard Wire. There's two brothers. One is City Wire and one is Standard Wire.

Q You say one is City Wire and one is Standard Wire?

A Yes. Henry Kubanek is the owner of City Wire and his brother Mike is the one that owns Standard Wire, and they were alternating meetings.

Q Now, who was the major spokeman on behalf of the Association at this meeting?

A Well, Tom Kennedy.

Q And what was discussed at this meeting?

A Well, we had a discussion on, you know, on this letter, on this here, too, on this one here.

Q Well, tell me --

A Well, the gist of it was, they --

JUDGE GIANNASI: Is this --

A (continuing) The problems, and they wanted a three-year contract to leave everything the same.

That is the sum of it all. All that I can think of.

Q Mr. Matienzo, you made reference to a letter.

A Yes.

Q Is that letter the June 19th letter?

A Yes.

Q That you just identified and that has just been introduced into evidence as General Counsel's Exhibit No. 14?

A Yes.

Q Is that correct?

A Yes.

Q Now, you made a reference to that letter that the association made certain proposals in that letter.

A Yes. One of their proposals was to extend the contract, you know, with no wage increase. That is one of the problems. Then we were discussing quite a few things, too.

Q Tell me what you discussed.

A Well, they were discussing, I recollect, about -- they didn't want to go into the schooling fund because they claimed we didn't have enough, that the wire workers weren't getting enough proper schooling, education, because we have our own school with the union and we went over that.

I said -- I told him I would take that up with the trustees and see if we can alleviate that condition if that is their problem, and they were discussing about my -- I recollect about the vacation pack. They didn't think it was fair that they can hire a man from the union, although he is a twenty-year man in the union, and he could -- brand new with these people, the guy, he could get five weeks vacation time, and they wanted the right to -- that after the third week of vacation that they would judge if the man could take the fourth or fifth week off.

I told him that we could work these problems out, that maybe the man wanted to take the fourth or fifth week out and we would try to talk to the man and have them take the balance of the vacation at a time that is more convenient for the boss. You don't get them closed up when he needs you, to take off.

We would work these problems out.

Q What was your position with regard to

their position where they wanted a man who was newly employed by them but who had been in the industry over twenty years, not to have five weeks vacation; did you agree with that?

A No, I couldn't allow that because this was in most of the contracts and we are in a fund, you know, and I just said we would try to work these problems out.

If a man has got five weeks coming to him, because he is just brand new with an employer, it is just unfortunate, but we were trying to work it out.

Q The way you would try to work it out was how?

A Well, talk to the man and explain to the man, "Listen, you are a new man here. Don't take five weeks when the boss needs you now. Try to work it out with him generally."

And most of the trade works out that way.

Q Confine yourself to the discussion now.

Let us go back a second to this thing about schooling. You made reference to schooling.

Does the union have a school?

A Yes.

Q What is that?

A We have a school for layout classes and for welding for the -- generally for the members of the union.

Q How did that come up in your negotiations on the 24th?

A Well, they claimed that the schooling that we have for layout involved mostly for ironwork, that we didn't have any schooling or anybody there teaching the wire worker type of, you know, making frames and paneling and a little bit different trade, although maybe welding is basic with all the shops.

But still their work was a little bit different than a basic iron shop.

Q What did you say in response to that problem?

A Sympathized with them and said I would take it up with the trustees, and I would also -- we have our man that is at the school, Mr. Schiffano, I would talk to him about this problem because it is absolutely right, because this group here, they are contributing to the fund and I can't see why they shouldn't have some rights there, that there should be some schooling forthem.

Q Besides those two issues, what else do you recall being discussed on the 24th?

A Well, they said they wanted the contract to go on for two, three years as is. I rejected that.

Q Anything else?

A I'm not sure right now, Mr. Blyer.

Q Do you recall any discussion about paneling?

MR. ISRAEL: I object, Your Honor; a leading question.

MR. BLYER: The gentleman has said he can't recall anything else. I am just identifying a subject.

JUDGE GIANNASI: I will permit it. I overrule the objection.

Q What was the discussion on the paneling?

A Yes, I'm sorry. Yes, that is a very important discussion. I'm sorry it slipped my mind.

They wanted to have the right to sublet work, what they call a standard panel. A standard panel, more or less, is like a 4 by 8 panel, you know, wire weaving.

They could buy these panels from some shop out of town cheaper than they could fabricate it in the shops, and because, you know, our sublet clause forbids any sublet work when there's men on layoff and they claim that if they have the right to buy these panels, you would call them from another shop out of town, then they would be able to bid a whole job and get the custom part of the whole job, too, which would keep our men busy.

And I did understand what their problem was and I didn't reject it.

I said to them we would go further into it at that time. I did not reject that at that time.

JUDGE GIANNASI: You said you would go further into it when?

THE WITNESS: I wanted--I wanted to study the impact of what it would be.. I wanted to talk some more about people in the trade.

You don't go into a negotiation and say, "Okay, go ahead and buy that," and half of my men are going to get laid off because of this impact.

JUDGE GIANNASI: How did you leave that issue?

THE WITNESS: Well, it would be further discussed at forthcoming negotiations, and we would come back to you when we finalize the agreement, and an answer one way or the other that we would -- you understand?

At that point I said we -- when we finalize this agreement and come to it.

JUDGE GIANNASI: We finalize the agreement? What do you mean?

THE WITNESS: Well, what I meant is that when we did come to an agreement, I would give them an answer, I wouldn't leave it hanging. I would either tell them yes, I would let you do it or wouldn't let them do it.

JUDGE GIANNASI: How could you have an agreement without them?

THE WITNESS: What they wanted, they were asking for this, you understand, and I wanted further time to study this. This is why I couldn't give them an answer right then and there. I didn't reject them.

When they asked me for this, I didn't reject it at that meeting.

JUDGE GIANNASI: What did you tell them was going to happen?

THE WITNESS: I said I was going to study it further and I would -- I more or less could understand their problem and I was not rejecting their request for this at that time.

JUDGE GIANNASI: But what was going to happen to this request after you studied it?

THE WITNESS: Well, we know what ultimately happened. We did permit it. We gave them their request that they could. They were allowed to buy these stock panels from out-of-town shops at a lower rate, which helped their business.

We did ultimately. We agreed and gave them that. I mean, it was a concession on the union's part in order to help.

JUDGE GIANNASI: But at this meeting on June 14th, it was an open question?

THE WITNESS: At this meeting, yes.

JUDGE GIANNASI: Go ahead.

BY MR. BLYER:

Q Mr. Matienzo, did yousay anything with regard to the negotiating session?

A Yes.

MR. BLYER: Let me withdraw that question.

Q Now, you have talked about some subjects that were discussed.

Do you recall anything else being discussed at that meeting; anything that the union brought up?

A Well, I don't know, I'm not sure. We discussed our proposals on certain items. We were going through, you know, all our proposals, plus what they were there--we were more or less going back and forth stating our positions, more or less.

We were bargaining, but also stating positions.

Q Do you recall any discussion on the subject of wages?

A Wages?

Q Yes.

A Yes. Well, actually, I did ask them if they had any proposal for wages, and at that time they told us no.

Q Who told you that?

A Well, Mr. Kennedy.

Q What did he say?

A Well, it came in conjunction when we were talking about having another meeting and another meeting, and they said, well, we would need near the end of June, and they were well aware that we were bargaining with the major--

MR. ISRAEL: Objection, Your Honor.

JUDGE GIANNASI: Don't testify as to what they were aware of. Testify what was said, what you said, what they said, and identify the person who said it.

THE WITNESS: I stated that wrong, I'm sorry.

They told me that they knew we were bargaining with the Allied Association.

JUDGE GIANNASI: Who is "they"?

THE WITNESS: Mr. Kennedy told that--

BY MR. BLYER:

Q Go on.

A And there was no sense in them making an offer until we had finished negotiations, economic package with the Allied Association, and also for the fact that most oftheir shops were closed for the first couple of weeks in July, and it was suggested that we get together somehow by phone and we set up another meeting sometime after the first week in July, and we would be in a better position to know where we are going and what we are doing.

Q Now, six or seven days later did there, in fact, a strike begin?

A Yes.

Q In or about the second week in July, do you recall speaking with anyone from the Association on the telephone?

A Yes.

Q Who called you? Did you call someone?

A I believe I called Mr. Jerry Bardy.

Q And when can you approximate this to be?

A Anywhere the 8th or 9th or 10th of July; somewhere about that time.

Q What was your conversation with Mr. Bardy on the telephone?

A Well, I told him that I had new stipulations for the Association to read, you know, new proposed changes, stipulations, however you put it, and --

Q What did he say?

A He said, "Fine. Bring them over."

Q What did you do?

A I did. I brought them over.

MR. BLYER: Your Honor, I would like this marked as General Counsel's Exhibit No. 15 for identification.

(Document marked General Counsel's Exhibit No. 15 for identification, of this date.)

Q Mr. Matienzo, I show you what has been marked for identification as General Counsel's Exhibit 15.

Can you identify what that is?

A Yes. This is a stipulation we presented to the Wire Works Association.

Q When you say "we," whom do you mean?

A The union.

Q Who in fact personally gave them to you?

A Well, I had given it to them in behalf of the union, to Mr. Jerry Bardy.

Q Approximately when did you give it to Mr. Bardy?

A Well, as I said, the 8th, 9th or 10th of July.

MR. BLYER: Your Honor, I offer this as G. C. 15.

MR. ISRAEL: No objection.

JUDGE GIANNASI: G. C. 15 is received into evidence.

(General Counsel's Exhibit No. 15 for identification received in evidence, as of this date.)

Q Mr. Matienzo, how does this, which has been introduced into evidence as General Counsel's Exhibit 15, differ, if at all, from General Counsel's Exhibit 13, the union proposals that were first submitted?

A Well, it is a modification. Some of the original proposed amendments were dropped and there are changes from the original proposed changes.

Q Now, did there come a time that the union received any response to the presentation of that stipulation?

A Yes. I believe about a week or so later we received a letter from the Wire Works Association.

MR. BLYER: Would you be good enough to mark this as General Counsel's Exhibit 16?

(Document marked General Counsel's Exhibit No. 16 for identification, of this date.)

Q Mr. Matienzo, I show you what has been marked for identification as General Counsel's Exhibit No. 16.

Can you identify what that is? Don't tell me what it says, just what it is.

A A stipulation. It is an answer. It is a letter from the Association because the stipulation I presented to them --

MR. BLYER: Your Honor, may I offer this as General Counsel's Exhibit 16. It is dated July 23, 1975.

MR. ISRAEL: No objection.

JUDGE GIANNASI: G. C. 16 is received into evidence.

(General Counsel's Exhibit No. 16 for identification received in evidence, of this date.)

Q Now, after receiving this letter, Mr. Matienzo, did you have occasion to contact anyone from the Association?

A Well, would you clarify your question? You mean formally?

Q No, formally or informally.

A Not since, you know, I would see Mr. Bardy, Mr. Knnedy at the strike line, you know; informally I would see them during th strike. It wasn't until our next formal bargaining session, which did not come until January.

Q In these informal conversations with Mr. Bardy and Mr. Kennedy, do you recall when or do you recall the next contract after?

A Sometime in August sometime I saw Mr. Kennedy or Mr. Bardy, I'm not sure which one, but he said they would never sign the stipulation, they are going to wait until Allied, until we settle with the Allied Association.

Q Did he say what he is going to wait for?

A Going to wait until we had settled with the industry before they would sit down and talk with us.

Q Who told you that?

A I believe Mr. Bardy told me that positively, and Mr. Kennedy, too, mentioned it, you know.

You know, I run around the strike ground, I see them quite a few times. Not a lot, but I'd see them and that was told to me by each of the parties, I'm quite sure.

Q You mentioned this occurred in August. Do you recall it happening at any other time after August?

A It may have, but not too much because, you know, I think it was just that point that it was a waiting game now.

Q When, in fact, did you meet again?

A Meet again in January.

Q In relation to the Allied contract, when did you meet with the Association?

A January 13th, I believe, was the date.

Q When was the Allied contract finalized?

A The first week in January, right after the holidays.

Q How did this meeting come about?

A Well, I believe I called up Mr. Bardy and Mr. Kennedy. I got them on the phone and I set a meeting date with them to go over this negotiation.

Q Was there in fact a meeting set up?

A Yes.

Q For what date?

A January 13th.

Q Where was it held?

A The Sheraton-La Guardia Hotel again.

Q Who was there on behalf of the union?

A I was, Mr. Frank Hernandez was present, and this time thepresident of our union, Bill Colavito was there.

Q And in behalf of the company or, I should say, management?

A Well, Mr. Tom Kennedy was there, and Jerry Bardy, Vic Estey, Henry Muchtin, Henry Kubanek, Mr. Hal Davis from Acorn. That's all.

5

Q Now, at this meeting who was the major spokesman on behalf of the union?

A Mr. Colavito.

Q On behalf of management?

A Mr. Thomas Kennedy.

Q With regard to the contract, what was discussed?

A Well, we went over the new stipulation which is based on the settlement we had with the Allied.

Q You refer to a new stipulation.

I show you what has been introduced into evidence as General Counsel's Exhibit No. 7.

Is that what you were referring to?

A Yes, that is what we were--this is what our discussion was about at that meeting.

Q What do you recall being discussed at that meeting?

A Well, this was still further change and modification from the previous stipulation and they wanted to discuss other things that they wanted different in their stipulation.

Q You said it was a further modification from the prior stipulation.

In what way was it different?

A Well, the wording, some wording language is basically economically the same as the economic package, the same as the Allied Association.

Q I am not referring to the Allied. I am referring to the stipulation that you provided in July to the Association.

Do you recall that?

A Yes.

Q When you hand delivered it?

A Yes.

Q How does the stipulation that is now before you, G. C. 7, differ from that?

A Oh, the changes are down. A lot of things were dropped from it. We dropped a lot of items out of it.

Q On the 13th what do you recall being discussed?

A Well, some language changes, and also discussed about the right for them to buy or sublet the standard panels we had discussion.

Q Was there anything resolved at that meeting over the panels?

A It wasn't resolved right then and there, but we were in agreement. We wanted to work out language and how we would put it in the agreement, and we agreed that we would let them have this, but we wanted to sit together and get the contract language just on exactly what type of standard panels we woud allow them to buy because we didn't want to leave them an open door to go out and buy everything. We did go into that.

Q Do you recall at this January meeting any other subjects being discussed besides what you have already told us?

A Yes.

Q What?

A The absence of Acme Wire Works' representation.

Q Before you get to that, how about with regard to the contract, the subject of the terms and conditions? I'm talking about terms and conditions of employment.

Any other subjects besides the paneling?

A Well, we talked about something--we had discussion about the seniority clause and in the thing, and we were talking about word language. Instead of the word "able," "qualified," and things like that.

General nature of some different language, things in there, and I can't recollect them all. Not too much importance--maybe it was to them.

Q Do you recall any discussion on the economics?

A Well, no, except they were agreeable to go along with the economics with what the Association had given us.

Q What Association?

A The Allied Association.

Q Is that in terms of the fringes?

A Yes. Well, thirty-five cent increases for each year plus whatever the funds were, they agreed oon that. They agreed on the holiday.

Q It was the wages plus the funds?

A Funds and the holiday, yes.

Q You mentioned there was some discussion about Acme on the 13th.

A Right.

Q Did you have a discussion with someone about this?

A Yes. Whether I raised it and Mr. Colavito followed up, we raised it with Mr. Kennedy and Mr. Bardy together.

We just said, "What happened to Joe from Acme?" It was put that way.

Q He had been at the other two sessions but was not at this one?

A That's right, he was not present at this one.

JUDGE GIANNASI: He was present at the June 24th session?

THE WITNESS: Yes, he was.

JUDGE GIANNASI: Do you remember any discussions that he participated in in the June 24th session?

THE WITNESS: As I said, it was just overall. We were talking about the whole trade at that time, and, you know --

JUDGE GIANNASI: Do you remember any particular discussion participated in by him?

THE WITNESS: No, I don't, I really don't know specifically.

JUDGE GIANNASI: Go ahead.

BY MR. BLYER:

Q To continue that point, on the 24th do you recall him speaking on subjects in general?

A Yes.

Q But you can't recall specifically which?

A That's right, because I said, as I stated before, it was informal and everybody was speaking here and there and they were all saying their piece about one thing or another.

Q On the 24th did he ever inform you or Mr. Colavito or any member of the Association that he had withdrawn or was going to withdraw from the Association?

A No.

Q Did he invite you to bargain with him individually, apart from the Association?

A No.

Q Did his membership in the Association come up at any time on the 16th or the 24th of June?

Did his membership in it, the question of his membership come up?

A No.

Q Okay now. Getting back to January 13th, what was the discussion among yourself, Mr. Colavito, Mr. Bardy and Mr. Kennedy about Acme?

A Well, we inquired about it, and to my best recollection --

Q What was said?

A Tom Kennedy told us that he had heard, but he wasn't sure, that Acme Wire Works was finished with us, or words to that effect, not verbatim, and that--

Q What was your response?

A Well, I told him we didn't hear anything, "Where did you hear that from?"

Well, he responded that he heard, but -- and Bill said, "Can you be more specific and let us know positively?" Because we haven't heard a thing, and Mr. Kennedy said he would.

He said when we came together at the next meeting, he would positively let us know what happened, because at that point he only told us what he had heard but he wasn't positive.

Q Now, was there a next meeting that you attended?

A The next meeting was--you are talking about the meeting after this?

Q Yes.

A We had a January 19th meeting.

Q Where was this one held?

A At the Sheraton-La Guardia Hotel, again the same.

Q Were the same people who were there on the 13th present on the 19th?

A Yes, they were.

Q What about Mr. Batthaney?

A No.

Q Was there any discussion with regard to the stipulation?

A Yes. We went over the whole stipulation and we came to an agreement on what language changes, standard panels and things, and we came to an agreement with the stipulation with the Association.

Q You made reference to certain language changes.

A That's right.

Q Where on the document, if anywhere, do we have this agreement that was worked out on certain language changes? Just tell me whereon the document.

A Well, on the bottom here, on the left-hand was written in --

Q Where on the document, if anywhere, do we have this agreement that was worked out with regard to the paneling?

A This is on the bottom written in here.

Q What part of the document is that?

A Well, I'd say the lower part where it started with No. 10 wire.

Q Is that under the reference to Section 20?

A Yes.

Q Now, the language changes with regard to what section?

A Section 20 was the sublet clause section.

Q What about the language changes, what sections?

A Well, one was not a language section, but with all the shops, all the employers agreed they would pay the employees for the 4th of July holiday in 1975. That was written in.

Then there was a change in Section 9-C, add the word "qualified" instead of the word "able."

I believe that is in the recall section. Section 13-B is the seniority section.

Q And there was a change with regard to that?

A Yes, about seventeen work days. They changed it for seventeen work days. It is a language change really.

Q Now, sometime during the course of negotiations on the 19th, did the subject of Acme come up?

A Yes.

Q Who brought it up and what was said?

A Colavito raised it with -- well, I could have, too. I believe Mr. Colavito raised it with Mr. Kennedy.

Q What was said?

A Mr. Kennedy told us that Mr. Batthaney resigned and he handed us the letter, and Mr. Colavito read it and I read it and back to Mr. Colavito again, and Mr. Colavito raised a question.

Q What did he say?

A Well, he stated that there was an August date on this letter and here we are on January 9th.

Q Go ahead.

A And I think he was referring to Jerry Bardy at that time, and Jerry said, "Well," he says, "I received this letter from him on the 16th," he says. "That is when he gave it to me."

So Bill, I recall, Bill asked him how come that he has got this date on there, and Jerry says, I believe, he said he put that date on there because that is when he was thinking of leaving us, but--

Q Thinking of what?

A Thinking of leaving the Association or withdrawing.

Bill did tell him, "Well, we never received any communication or anything from that fact," and he asked Mr. Bardy, I believe, Mr Bardy to sign that letter, hand it to us for that reason, because he wanted--well, obvious reasons now.

Q Mr. Matienzo, I show you what has been introduced into evidence as General Counsel's Exhibit 8.

Is that the document that you were referring to?

A Yes, this is the document.

Q As being the one that even Mr. Kennedy -- I think you said that Mr. Kennedy handed to you?

A Mr. Kennedy handed to us.

Q And that is the one which you believe Mr. Bardy signed?

A That's right.

Q Do you recognize the signature at the bottom?

A Yes, this is Mr. Bardy's signature.

Q Thank you, Mr. Matienzo.

Mr. Matienzo, before this time, the 19th of January, had you ever heard -- on the 14th or the 13th -- of Acme's desire or decision to withdraw from this group bargaining?

A No.

Q Had such request ever been made to you to withdraw from the Association bargaining?

A No.

Q Had it been made to the union, as far as you know?

A As far as I know, no.

Q Had you ever been requested by Acme to commence individual bargaining with it?

A No.

Q Did you, in fact, commence any individual bargaining with it?

A No.

Q Did you ever at any time attempt to persuade Acme to leave the Association and bargain with you on an individual basis?

A No.

Q On the following day, the 20th of January, tell me what happened?

A I went to the shop.

Q What shop?

A Acme Wire Works, located at Ten Eyck Street.

Q Whom were you with at the time?

A Well, I had some union members. I had Mr. Al Shaeffer with me. I think I had Mr. Hernandez with me.

Q What happened?

A Well, the door was locked, so I knocked on the door and the people opened up, I guess, about six or eight inches round or square.

I recognized Mr. Batthaney, Jr., and I told him that I wanted to talk to him.

JUDGE GIANNASI: Was this the same Mr. Batthaney that was in bargaining sessions back in June?

THE WITNESS: Yes.

JUDGE GIANNASI: All right.

A (continuing) And very abruptly he said, "No, I'm not going to talk to you," and he shut the door and that was it.

Q What did you do?

A Well, I went down to a phone booth and I called him up and I got Mr. Batthaney on the phone.

Q Did you recognize his voice?

A Yes, I did.

Q Okay.

A I told him that we had consummated an agreement with the Wire Works Association and wanted him to honor it.

He told me that he had resigned from this group. He had nothing to do with me any more and he had, on the advice of counsel, "You are not going to talk to me any more," and that was it, and he hung up.

Q Before he hung up, did you have any chance to say anything to him besides what you have already told me?

A Yes. I told him that we got a contract with the Wire Workers.

Q No, after he gave you his response of saying that he had nothing to do with you any more, he had resigned on advice of counsel, he didn't want to talk to you?

A I told him we signed an agreement, I wanted the men to go back to work. I wanted him to honor that agreement and send the men back to work. But he says, "I'm not going to talk to you."

Q After the contract was signed with the Association, tell me what happened with the strike that had been commenced on June 30th of '75 with regard to the various employer members of thatAssociation?

A Well, gradually went back to work, the strike was over and some shops called all their men right back and some did not call all their men back until they got rolling back, but they all called their men back to work, everyone that was on strike, except--

Q Except who?

A Except Acme Wire Works. He was on strike with us yet, as far as I'm concerned.

Q How about the contract that was agreed to with the Association? Which employer members, if any, of the Association are living up to that agreement?

MR. ISRAEL: Objection to the relevance, Your Honor.

JUDGE GIANNASI: I will permit the question. What is the objection?

MR. ISRAEL: It has no relevance to this case. We are not saying there isn't a contract between the Association members and the local, we are talking about Acme.

JUDGE GIANNASI: That is correct, but I will permit the question anyhow.

I will give it the weight I think it deserves.

Q You may answer the question, if any of the employer members are living up to the contract.

A They are all, except Acme Wire Works.

Q At the time of the strike on June 30th of '75, Mr. Matienzo, how many employees did Acme Wire Works have?

A Four employees.

Q Do you know their names?

A Yes. It was Martin Hammel, Frank Paradise, Dan Dougherty, I'm not sure of the other one, what his name is, Diaz or something. I'm not quite sure of the last name, Diaz...

Q The first name Manuel?

A Yes.

Q Now, on June 30th of '75, did they all go out on strike?

A Yes.

Q Did there come a time when you learned that some of them were working for the company, Acme, after the strike?

A Yes.

Q Just tell me who, to your knowledge, returned to work sometime after the strike?

A Mr. Daniel Dougherty.

Q Do you know of anyone else who has returned?

A Not to my knowledge. I mean actual knowledge. You know, I heard, but to my knowledge, I haven't seen. I only know of Mr. Dan Dougherty for a fact.

Q You heard that someone else is back, too?

A Yes.

Q Who would that be?

A That one, Manuel Diaz.

Q Have you been down to the shop at any time after June 30th of '75 besides the trip on the 20th of January, '76?

A Well, I went by his new location but at that time no one was there. He has a new location. He has moved since that time to Menehan Street.

Q Since the end of March, the beginning of April, have you been down to the shop on Menehan Street?

A No.

Q You have no?

A No.

Q At any time, Mr. Matienzo, at the bargaining session in January of '76, was the union ever accused across the bargaining table of not bargaining in good faith?

A No.

Q At any time, to your knowledge, has the union been served with unfair labor practice charges which allege you have been bargaining in bad faith?

A No.

MR. BLYER: Thank you very much.

Thank you, Your Honor. I have nothing

further.

JUDGE GIANNASI: Off the record.

(Discussion off the record.)

JUDGE GIANNASI: On the record.

You may cross-examine.

MR. BLYER: Your Honor, I propose the following stipulation, that General Counsel's Exhibit 17, which is a contract between Acme Wire Works and Local 810, the party to the contract in this action, which was entered into on the 1st day of January, 1976, covering all employees employed by the company at the time, bearing an expiration date of December 31, 1976, be accepted into evidence.

JUDGE GIANNASI: Any objection?

MR. ISRAEL: No objection.

MR. KREISBERG: No objection.

JUDGE GIANNASI: All right, it shall be received in evidence as G. C. 17.

(Document marked General Counsel's Exhibit No. 17 for identification and received in evidence, as of this date.)

JUDGE GIANNASI: Before we break for lunch, I would like you to again state for the record that you will be missing for part of these proceedings, and that it is agreeable to you.

MR. KREISBERG: It may be necessary, as I indicated in our off the record conversation, for me to leave th[illegible]aring at this time.

I may not be able to be back precisely at the time we resume.

If I am not back, I consent that the hearing proceed in my absence, and I will make every effort to be back as soon as possible.

JUDGE GIANNASI: All right.

At this time we shall recess for lunch, and I believe that we can resume -- it is now twenty minutes to 2:00, let us resume at a aurter of 3:00, in an hour and five minutes.

(Whereupon, at 1:40 o'clock P. M., a luncheon recess was taken until 2:55 o'clock P. M.)

AFTERNOON SESSION

2:55 o'clock P. M.

JUDGE GIANNASI: On the record.

You may cross-examine, Mr. Israel.

MR. BLYER: Before we proceed, Your Honor, I would like to note, with everyone's permission, I substituted copies for the original of General Counsel 17. That was the contract between 810 and Local 455 and I have taken out the original and substituted copies at Mr. Israel's request.

I would also like to note for the record with regard to the stipulation on G. C. 17, and as I understood it, although the contract was stipulated into evidence, it does notprovide for Local 810's signature, and Mr. Israel is willing to concede that the original of G. C. 17 was signed by Local 810 as well as the Acme representative--

MR. ISRAEL: That is correct.

JUDGE GIANNASI: All right.

MR. BLYER: Thank you very much.

CROSS-EXAMINATION

BY MR. ISRAEL:

Q Mr. Matienzo, what is your exact position with the union?

A Business agent.

Q Are you also an officer?

A Well, it is an officer.

Q In what sense is business agent an officer?

A Well, we service the shops, you know, negotiate contracts, and, you know, settle grievances and et cetera. That is part of my duties. I am a paid official.

We have other officers who are not paid officials.

Q Is Mr. Colavito a business agent?

A No, he is the president.

Q Mr. Zito a business agent?

A No.

Q What is he?

A Financial secretary-treasurer.

Q Is there a vice-president?

A Yes.

Q Who is that?

A Mr. Anthony Schiffano.

Q Is he a business agent?

A No.

Q Do you hold any title other than business agent?

A No.

Q Is Mr. Hernandez a business agent?

A No.

Q Is Mr. Hernandez an employee of the union?

A Well, he is an officer, but he is not a paid official.

Q When you say he is an officer, what title does Mr. Hernandez hold?

A He is a member of theexecutive board.

Q Is Mr. Hernandez an employee of the company working in the industry?

A Yes.

Q What company is that?

A Well, on strike now, Samson Wire Company.

Q During normal times Mr. Hernandez would be paid by his employer Samson?

A Normal times, working in the plant, he would. When he is on union business, then the union pays him.

Q Why did Mr. Hernandez accompany you during these two negotiating sessions in June?

A Why?

Q Yes.

A Well, on orders of the president, Mr. Colavito.

Q Was he still an employee of Samson's?

A Yes.

Q Was Samson on strike in June?

A No.

Q Did anyone else on behalf of the union attend the two meetings in June?

I will be referring to just the Wire Work--

A No, just Mr. Hernandez and myself.

Q Were you present at the 1973 negotiations with the Wire Works Association?

A Yes.

Q Who conducted those negotiations?

A There were two of us at that time, Mr. John Zito and myself.

Q Mr. Zito was financial secretary-treasurer?

A Yes.

Q And negotiations prior to that were in 1970?

A Yes.

Q Who conducted those negotiations?

A Well, I was in on them, but I don't "rectify" (s.i.c.) I was in charge of them.

Q Mr. Zito present?

A He could have been.

Q Mr. Colavito present?

A I don't believe so.

Q Do you recall any negotiations other than negotiations in 1975 where either the president, secretary-treasurer or vice-president of the union did not conduct negotiations?

A That did not?

Q Yes.

A No, to my knowledge, there was always one paid official or another. We had a past business agent who passed away, was Mr. Candellora, who was in on negotiations.

Q I didn't ask you that, Mr. Matienzo.

I asked you, do you recall any negotiations before 1975 where either the president of the local, the vice-president of the local, the treasurer of the local or the secretary of the local was not present and conducting negotiations?

A Well, I could say to you pick anyone that would not conduct them. I just stated it changes from time to time.

Q Didn't Mr. Zito attend in 1973?

A Depending on who the president had sent out to conduct the negotiations. Depending on how busy we were with other companies and our associates.

Q Who was Mr. Zito negotiating with in 1975?

A 1975?

Q Yes.

A He was. I believe he was involved with the Allied Association.

Q And Mr. Colavito was involved with the Allied Association?

A That's right.

Q Mr. Zito was present in the 1973 negotiations with the Wire Works Association?

A Yes.

Q Do you know any reason he wasn't present in 1975 negotiations with the Wire Works Association?

A I have no idea why.

Q I will ask you again. Do you know of any prior negotiations with the Wire Works Association where an officer, either the president, the vice-president or the secretary or treasurer were not present?

MR. BLYER: Your Honor, I object. Just because I think the question is misleading. When Mr. Israel says an officer and then he lists certain officers, he is not listing all the officers.

Business agents are officers, as Mr. Matienzo has testified, so I think that is why the problem is --

MR. ISRAEL: I will rephrase it.

JUDGE GIANNASI: I believe it might be

confusing. Rephrase it.

MR. ISRAEL: I will rephrase the question.

Q Mr. Matienzo, prior to 1975, do you recall any negotiations, the Wire Works negotiations, where either the president, the vice-president or the secretary-treasurer were not present?

A You still did not state the business agent.

JUDGE GIANNASI: Well, he asked you specifically.

A (continuing) Well, on those four positions you had said that were not?

Well, in '75, there was one. In '73, I would say was not.

Q Which officer?

A You are going back, because, you know, to get clarity here let us put the word "a paid official."

Q No, let us not.

JUDGE GIANNASI: No, just answer the question.

A Clarify it.

JUDGE GIANNASI: Just answer the question to the best of your knowledge and the best of your recollection.

Let us have the question one more time.

Q Do you recall any negotiations prior to 1975 with the Wire Works Association at which the president or the vice-president or secretary or the treasurer were not present?

A Yes, I recollect there was that time they were not present.

Q Which negotiations were they?

A In 1970.

Q I thought you said you didn't recall who was present in 1970.

A '73, Mr. Zito was present. You said who was not.

Q Don't twist me up.

JUDGE GIANNASI: Do you understand the question?

THE WITNESS: Yes, but he is -- excuse me -- a matter of clarification. If we can clarify the whole issue, is that the general pattern is that some way or another the president assigned a paid official as part of the negotiations to this Wire Association.

JUDGE GIANNASI: I understand. Counsel is trying to find out and asked you whether you recall or you know of any negotiations prior to 1975 where one of the named officers that he named were not present, negotiations that were carried on by non-officers.

MR. BLYER: You don't mean non-officers?

THE WITNESS: Because he left out one of

the officers; that's what I'm trying to get at because in '63, '65, '67, '70, there was a paid official, business agents were present. There were negotiations. It just so happens in '73, we had two officials, paid officials at that one.

Q 1973?

A '73.

Q Who was present?

A Mr. Zito and myself.

Q Mr. Zito was the secretary-treasurer?

A That's right.

6 Q Who was present in 1970?

A 1970?

Q Right.

A Mr. Meyer Tessler.

Q Anybody else?

A I was.

Q Anybody else?

A Not to my knowledge--I can't recall right now.

Q What was Mr. Tessler's title in 1970?

A Business agent.

Q Anybody else?

A I was there. I was an executive board member.

Q Did Mr. Tessler have any other title?

A No.

Q You say Mr. Zito was not present in 1970?

A No.

Q Mr. Colavito was not present in 1970?

A No.

Q Now, in the 1975 negotiations, would you describe the authority that you had in those negotiations?

A Well, it is a broad authority to sit down and bargain.

Q Were you authorized to make concessions without consulting with the executive board of the union?

A No.

Q At any time at the two proceedings prior to June 30th, did any representative of the association ask that Mr. Colavito attend these meetings?

A Did they ask if he would?

Q Yes.

A I'm not certain. It is possible, it is possible.

Q Did they ask that Mr. Zito attend the meetings?

A '75?

Q '75.

A If someone had asked?

Q Yes.

A I can't recall. It's possible.

Q Do you recall Mr. Bardy telling you that you had no authority, that the Association insisted that either Mr. Zito or Mr. Colavito come down to negotiate?

A No.

Q Do you recall Mr. Bardy telling you you were acting as a messenger boy, you were stalling?

A No.

Q Didn't say that at all?

A No.

Q How did the meeting on June 24th end? Specifically, did you set a date for any other meeting?

A I said that I would call them. They wanted to wait and see what the Allied Association is going to do.

Q Who said that to you?

A Either Mr. Kennedy or Mr. Bardy, one of those two.

Q Were they both present at both of the meetings?

A Yes.

Q Whoever said it, did he say it in the presence of the other?

A I believe so.

Q Do I understand you testified that one of them told you they didn't want to sit down any more until the Allied settled?

A Well, not exactly verbatim.

Q What did they say?

A Well, something like, "Let's wait and see what the Allied is going to do." They would not make any economic offer to me at all.

Q In fact, isn't that what you said, Mr. Matienzo? Didn't you tell them there is no sense talking until you settle with the Allied?

A No.

Q Did not state that?

A No.

Q When you answered Mr. Blyer's questions previously, didn't you tell Mr. Blyer all that you recall that was said at the June 16th meeting?

A As best as I could recollect.

Q Was there a discussion about the Association giving you letters signed by each of the employers authorizing the Association to bargain for them?

A The letters would be given to us?

No, I had a discussion about a letter with reference to who the Association represented because it was part of the discussion, would they call Wire Work, it was a question as being able to participate.

Q Didn't you request at the very first meeting that either Mr. Bardy or Mr. Kennedy obtain for you a letter signed by each employer authorizing the Association to bargain with you on behalf of that employer?

A That was--already had been requested prior to meeting with us. We wanted to know who they were going to represent, and we do this with everyone, "Who are your members?" So we have to know who we are bargaining with.

Q Mr. Matienzo, at the June 16th meeting, did you not request either Mr. Bardy or Mr. Kennedy to obtain for you a letter signed by each employer authorizing the Association to bargain on behalf of that employer with you?

A My recollection, we had a discussion where I had asked for a letter from each employer or not I can't recall, because the discussion centers, as I said, about Acorn Wire Works.

Q The answer is you don't recall?

A The answer is we had a discussion. I can't recall. That would be the answer, yes.

Q Do you recall the Association giving you letters at the June 24th meeting?

A No, I don't recall that.

Q Did the Association give you letters at any time signed by any of the employers authorizing it to bargain on its behalf?

A I can't recall at this time.

Q Do you recall remarking that you had gotten letters signed by all of the employers of the Association but not Acme?

A I can't recall it.

Q Do you recall any discussion at all about letters signed by any of the employer members of the Association?

A I said there may have been a discussion, yes, but exactly how or what, how the discussion got around it --

Q Incidentally, Mr. Matienzo, were you present at this entire June 15th meeting?

A Yes.

Q Were you present at the entire June 24th meeting?

A Yes.

Q At the June 24th meeting, was there any discussion about the union proposals?

A Very slightly; not too much. They mostly involved--I believe mostly involved with their problems.

Q Had the union, by the June 24th meeting, submitted to the Association its proposals, which were

General Counsel's Exhibit No. 13, if you recall this document?

A That was the union's proposals.

Q Had it already been submitted by the June 24th meeting to the employers?

A Yes, they had it prior to that.

Q Pardon?

A Yes, they had it.

Q Are you sure this document wasn't submitted to the Association after the strike began?

A Positive.

Q I'm sorry, I can't understand you.

A I'm positive it was given to them prior to that.

Q What day?

A I'm not sure of the date, but I know that was in the hands of that Association at that meeting.

Q How do you know that?

A Just because they were reading over it. You would have to get everybody from that Association down here because several of them had that document.

Q Did you give it to the Association, you personally?

A I believe so. - was giving that to everybody. I was giving them out to everybody I was negotiating with.

Q Whom did you give it to on behalf of the Association?

A Well, positively, it would have to be Mr. Kennedy and Mr. Bardy would receive it.

Q Do you remember giving it to Mr. Bardy before the strike began?

A Exactly when, no, not exactly, but I do recall I gave it to them.

Q Do you recall giving it to him before the strike began?

A Yes, before the strike.

Q Do you recall giving it to Mr. Kennedy before the strike began?

A Yes.

Q Do you recall --

A I don't know when.

Q Sorry?

A Prior to the strike.

Q Do you recall when you gave it to Mr. Kennedy?

A I just answered that.

Q No, you answered with respect to Mr. Bardy. Now I am asking you with respect to Mr. Kennedy.

A I said I gave it to either one of them or maybe both, all right.

Q But you don't recall when you gave it to either one of them; is that right?

A Right.

Q Do you recall where you gave it to them?

A No.

Q Do you have any specific recollection of giving it to either of them at either of these two meetings in June?

A It is my recollection that I had given it to either one of the two, Mr. Bardy or Mr. Kennedy, prior to the meeting. It is possible I would have given it to them, I wouldhave gone to their office and handed it to them prior, more or less, so they get the gist of the negotiations. It is possible, but I would not positively say this is a fact.

Q Is this prior to the first meeting or prior to the second meeting?

A Prior to the second meeting.

Q So that they didn't have it in their hands at the time the first meeting took place?

A It is possible no.

Q Well then, was there any discussion at all at the first meeting concerning the union proposals?

A I said I wasn't sure if I gave it to them at the first meeting or not. If I did not give it to them at the first meeting, then we could not go over the proposals.

I did say, in past questions, that most of the discussion was involving about their problems.

Q At the second meeting was there any discussion about the union proposals, any discussion at all?

A I believe so. I would have to--I haven't got my notes. I have to go over my notes.

Q Do you have them with you?

A No.

Q Do you recall what, if anything, was discussed at the second meeting or the first concerning the union proposal on vacations?

A Well, we did ask for an increase in the benefits, and they did discuss this part about the five weeks, you know, that, you know -- let me put it this way. Their contract, the present contract that they had in '75, that an employee would have had five weeks and at his option could have taken the whole five weeks, whereas prior contracts they had the wording of the language of the Allied Association that the employee could take the first three weeks, and then it would be at the option of the employer for the man to take the fourth and fifth week, see?

Now, the option -- there was no option with them.

Q Mr. Matienzo--

A They wanted that option.

Q Mr. Matienzo, are the vacation payments made through a fund?

A Yes.

Q Is there a vacation benefit fund?

A Yes.

Q And do the employers contribute to the vacation benefit fund?

A Yes.

Q In the last contract, the contract which expired June 30th, what rate of contributions was made by the employers to the fund?

A I believe it was seven and a half percent plus one percent. I think seven and a half percent or eight and a half--seven and a half percent.

Q In the negotiations for the contract which started July 1, the union asked for an increase of those contributions, did it not?

A Yes.

Q Now, referring you to Section 16 of General Counsel's Exhibit No. 13, which is the union proposals, subdivision E, would you please read that to yourself?

A E?

Q E.

A Read it out?

Q Read it to yourself, please, Mr. Matienzo.

Now, what was the union proposal with respect to the increased rate of contributions? Specifically, what amount was the union now asking for?

A Nothing specific.

Q In fact, the amount is left blank, is it not, in the proposal?

A That is correct.

Q When did you first communicate to the employer, if at all, what was the increased amount the union was seeking?

A When did I communicate it?

Q Yes.

A Not until January.

Q Not until January?

A Yes.

Q About seven months after the strike started?

A That's right.

Q In that same document, Mr. Matienzo, will you please turn to Section 24, the wages?

A Any part of 24?

Q The first five or six lines.

A Yes.

Q At the second meeting I believe you previously testified there was some discussion as to the union's wage proposal.

A Right.

Q What was the union's wage proposal?

A Substantial increase.

Q Prior to the time the strike began--

JUDGE GIANNASI: Wait a minute. Are you reading?

Is that word, or those words "substantial increase" appear in that document?

THE WITNESS: Yes.

Q Prior to the time the strike began, did you advise the Association how much of an increase you meant by a "substantial increase"?

A In specific terms, you mean?

Q In specific terms.

A No.

Q When was the first time you advised the Association how much of a substantial increase in wages you wanted?

A A meeting with the Association or prior to that. I don't --

Q At any time youadvised the Association.

A Well, I had given a stipulation sometime in the middle of July, with a set amount of increase on there.

Q That was this document marked General Counsel's Exhibit No. 15; is this what you are referring to?

A Yes.

Q Now, that was the first indication of what the union was looking for specifically in wages; is that right?

A Yes.

Q That was approximately two weeks after the strike began; is that right?

A About that, yes.

Q Well then, what did you discuss about wages at the second meeting, about the union proposal on wages?

A How did we discuss it?

Q No, what did you discuss?

A We didn't.

Q Did not discuss wages at all?

A No. Wanted to. They didn't want to.

Q Well, there are a variety of trust funds specified in the contract, are there not?

A Yes, six or seven.

Q Six or seven funds.

Do you know what they are offhand, Mr. Matienzo?

A I will see if I can recollect them.

Pension, welfare, annuity, vacation, training fund, sick leave and severance pay.

Q Those are separate funds?

A Yes, each one is separate, yes.

Q And under the old contract, that is the contract which is expired June 30th, the employers made contributions to these various funds?

A Yes.

Q In the negotiations was the union looking for an increase in contributions to all of these funds?

A No, not all of them.

Q Which funds were they looking for an increase?

A My best recollection, welfare, pension, vacation, annuity. That is all I recollect.

Q Prior to July 1, did you advise the Association that the union was not looking for an increase in all the funds but only some of them?

A Did I advise them?

Q Yes.

A Well, I advised them with this.

Q Pardon?

A Only advised them as far as the proposals.

Q Would you turn to Section 26, please?

A Yes, 26, 27, 28, 29, 30, 31.

Q Those are the six funds, are they not?

A Yes.

Q Would you read Subdivision A out loud, please?

A "There shall be an increased contribution by the companies to each of the trust funds."

Q Well, it says to each of the trust funds?

A That's right.

Q Did you advise the Association that each only meant some but not all?

A No.

Q Did you discuss the increased contributions at either the first or second meetings in June?

A In specific terms?

Q Yes.

A No, not specifically.

Q Well, did you discuss the terms at all in either of the first two meetings?

A No. There is a reason, they know.

JUDGE GIANNASI: What was the reason?

THE WITNESS: Because generally the fund as we negotiated mostly with the Allied Association, and it is a fund that practically all of the employees contribute to. It is standard. We don't say one guy, "Give us ten percent," and the other guy five percent.

It is a standard thing in the whole industry, and generally the trustees of the funds are from the Allied Association.

Specifically, when there is an increase in any of the funds, generally that is the pattern for our whole industry, percentage or cents per hour or any way we do it.

Q Mr. Matienzo, why didn't you try to set a pattern by negotiating it with the Wire Works Association?

A They would not make me an offer.

Q How much were you asking for, Mr. Matienzo?

A You negotiate with this group as long as I have, you live by a pattern and a pattern is never-- I mean, as long as I have been negotiating with them, from approximately '63 on, have they settled before Allied settled, never.

Q Mr. Matienzo, how much did you ask them for in terms of increased contribution to each fund?

A Not in specific terms.

Q Did you give them a specific amount for any fund?

A No.

Q Now, you say historically Allied set the pattern for the funds.

A Yes, but not always, but generally. I wouldn't want to say always. That would be a misnomer (s.i.c.) because sometimes we do settle with some independents and then the pattern is set and--but I would have to say that when it is settled, it is standard for everybody.

Q So if I understand you correctly, there were times when the Allied did not set the pattern for the funds; is that right?

A I say it is possible. I would have to recollect my memory.

Q Do you recall?

A Well, it is a possibility -- in 1967 we made a breakthrough, but I'm not sure. We signed up quite a few of the independent shops, but I'm not--economically, but I'm not quite sure if we made a breakthrough with the funds on the independent shops. I wouldn't swear to it.

Q Let me understand this. For many years the Allied has been an Association consisting of various employers in the industry; is that right?

A That is correct.

Q And the union has negotiated contracts through the years with the Allied?

A That is correct.

Q And the union has historically also negotiated contracts with independent companies, is that right?

A That's right.

Q You say it is possible that in the past on at least on one occasion they contract negotiated with independent companies, set the pattern for the funds?

A I said I'm not sure for the funds. I know economically we did one year, we set a pattern for wages, but I'm not sure about the funds.

Q With respect to negotiations for the new contract that is starting July 1, 1975, had the union made a decision that Allied was going to set the pattern for the funds?

A No, I don't believe so.

Q Had the union made a decision that the independents were going to set the pattern for the funds?

A No, just like hard-nosed bargaining, that what we could get the best of, and if we negotiate with the independents, if we could get something better there or with the Allied, naturally it is bargaining where we come out the best.

It is hard to say specifically one, at one given point in time who is going to set the pattern. You don't know what kind of a fight you are in yet.

Q Is that with respect to the funds that the union was looking to get the best deal from whoever it could get it from; is that right?

A Well, it is a broad way to put it, but I guess generalized,yes, you could say that.

Q Then why didn't you give the Wire Works specific demands with respect to the funds and see if you could make the best deal with respect to that Association?

A I asked them.

Q What did you ask them, Mr. Matienzo?

A I asked them, I said, "Give me an offer." They offered me nothing.

Q How much did you tell them you wanted?

A I didn't tell them. I asked them to give me an offer and they told me they are going to wait for Allied, so there you were. We weren't talking to each other that way.

Q When did they tell you, Mr. matienzo, before or after you gave them proposals?

A They told it to me on the 24th of June meeting.

Q Before the 24th, it is your testimony they had the proposals; is that right?

A I said they had the proposals by the 24th meeting. I'm not sure if I gave it to them the 16th or in between or before that.

Q When they told you on the 24th that they were going to wait for Allied, they already had your proposals; is that right?

A Yes.

Q These proposals said there shall be an increased contribution to each of the funds; is that right?

A Right.

Q And at no time prior to the 24th did you tell them how much the increased contribution was requested?

A Not specifically, no.

Q Do you know if anyone had told the Allied Association what the union was looking for on the 24th of June?

A I don't know. There were negotiations going on all over. Some offices may have, by some employers, but not in general terms that I could say pin it down.

Q Well then, at the 24th what specific union proposals do you recall being discussed on the 24th?

A I stated that the majority of the negotiations at that point, much as I wanted to go into contract and proposals, they kept steering it back that they were being priced out of the market and they couldn't take any more; they were giving me all their problems.

They kept steering back to me and still-- regardless of what you say, they were still going to wait for Allied. They were not going to put an offer on the table.

I remember I asked them, "Would you make me an offer?"

"No."

Q Did you ask them to make an offer on wages?

A On wages, on funds, on anything.

Q They said they are going to wait for the Allied?

A Exactly verbatim. I would say in the gist of it, yes. I don't know exactly the words, but they had indicated to us they were going to wait to see how the union came out with the bargaining with the Allied Association because all their -- it's been a fact, too, that their Association could tell you this. They always considered themselves like a branch of the Allied Association.

They attended their meetings and all this. They were like a first cousin to the Allied.

Q Mr. Matienzo, during the six and a half months of the strike, at any time did Mr. Bardy or Mr. Kennedy tell you they wanted to negotiate but that they wanted wither Colavito or Zito to be there so there could be real negotiations?

A During the strike?

Q Yes.

A They asked for Mr. Colavito to be at the negotiations.

Q When?

A I'm not sure. It was June or maybe when I met them during the strike time it is possible. They asked me if he could be there and I think I recollect it, I said I could always have him there if you fellows come to the point where you are going to come to an agreement.

We never came to that point, close to having an agreement. They were going to put something on the table to be meaningful, not just because they wanted to meet the man.

Q Did I understand you to say that you would only bring Colavito down if you were close to a settlement?

A I don't mean in that sense. If there is going to be anything meaningful from these people, that they were going to come with an offer of something, so they never came to it, they never put anything on the table.

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Q How do you know it would be futile to have Colavito come down and see what they offered to Colavito?

MR. BLYER: Your Honor, I object. He is arguing with the witness now.

JUDGE GIANNASI: I will permit that question to be asked and answered.

THE WITNESS: Can you repeat it?

MR. ISRAEL: Read it.

(The reporter read the last question.)

MR. BLYER: I object to the question on the grounds I don't understand the question.

MR. ISRAEL: I will withdraw the question.

Q Do I understand, Mr. Matienzo, you to say it is possible that the Association asked for Mr. Colavito at one of the meetings in June?

A Yes, but now --

Q Yes or no, that is all it calls for.

A It is possible they could have asked to see Mr. Colavito, but you have to know why, so --

JUDGE GIANNASI: Wait a minute. Answer the question.

A Yes, they did ask us, but what it was meant for them -- to see him in negotiations or -- can I enlarge and explain my recollection?

Sometimes the--

JUDGE GIANNASI: Just answer the question.

Is it possible that they, the Association, could have asked for Colavito's presence in either the June 16th meeting or the June 24th meeting?

THE WITNESS: Is it possible that they could have asked?

JUDGE GIANNASI: Do you remember anybody from the Association asking for Colavito to be present?

THE WITNESS: Yes, they did. I remember something like that was discussed, that they did say --

Q When?

A That one of them, and I'm not sure who, whether Mr. Estey or Mr. Bardy, said they have never seen Mr. Colavito and they would like to see him. That I recollection.

Q Didn't they tell you, Mr. Matienzo, that you had no authority to negotiate and they wanted someone who had authority to negotiate a contract with them?

A I don't know. A lot of things around the table, it is possible. I wouldn't say yes or no.

Q Didn't you promise to bring Mr. Colavito to a meeting?

A I said I would try.

Q Did you ever bring Mr. Colavito to a meeting before January?

A No.

Q Didn't Mr. Bardy continue to ask during the course of the strike, right up to January, for meetings at which Mr. Colavito would be present?

A No.

Q Ever ask you during the course of a strike to set up a meeting with Mr. Colavito?

A No.

Q Mr. Kennedy ask you for that?

A No.

Q Any other employers ask you for that?

A No.

Q Would you tell me again how the June 24th meeting ended with respect to any future meetings?

A Best recollection?

Q Yes.

A That I recollect that most of the shops were going on strike. Didn't mean anything to tell them and they wanted to wait and see how the union would do with respect to the negotiations with the Allied Association.

Q Is that what they said to you?

A No, not the exact words, but in that vein, yes.

Q Did Mr. Bardy say that to you?

A Possibility he did or Mr. Kennedy did, but it was said. Somebody said it around that table.

Q So when you terminated the June 24th meeting, no adjourned or future meetings were set up; is that right?

A No, just that we would see what would develop and I would get a hold of Mr. Bardy and Mr. Kennedy sometime after July and by that time we should have a clear idea of what is going on with the Allied.

And then if there was, you know, a remote chance that we did come to an agreement with Allied and we still had time to sit down and talk with these people because most of them people were on vacation.

Q When did most of their people return from their vacation?

A Well, generally you take the minimum, which is a couple of weeks vacation. Some employees have five weeks, so if I had got a hold of the Association prior to the two-week period and we had signed up with the Association, it would have been a matter of days we could have settled with the Wire Works Association.

Q But in fact by July 15th you had not settled with Allied; is that right?

A That's right.

Q And what was the reason for bringing around to Mr. Bardy and Mr. Kennedy the stipulation which was marked General Counsel's Exhibit No. 15? Why did you do that?

A That was the pattern or the stipulation that the union had for the independent shops that had signed up. We had signed some shops up to that stipulated agreement there.

Q Was there a settlement with the Allied?

A No, Allied rejected it

Q Had the Wire Works Association indicated that they wanted to accept the contract that you had signed with independent companies?

A This one here?

Q Yes.

A With the letter they sent, they rejected it.

Q Prior to the time you handed this to either Mr. Bardy or Mr. Kennedy, had the Wire Works Association told you they were interested in settling for the same thing the independent companies were settling for prior to this?

A I had given this stipulation, as I said, the 8th, 9th or 10th of July, and Mr. Kennedy and Mr. Bardy said they wanted to study it and meet with their people. And I let it go right ahead. And, as I said, a week or so later, we got the letter from them rejecting this.

Q Now, this stipulation, this was the first indication of what the union was looking for in terms of wage increases?

A In specific terms now, yes.

Q That is a ten percent wage increase?

A Yes.

Q You asked for a four percent to the annuity fund?

A Yes.

Q Now, reading the section which is marked "Trust Funds" and reads as follows:

"Sections 26, 27, 28, 29, 30 and 31. Union proposal except add Section 16 and add to end of first sentence, the trust fund as negotiated until all the Allied and Standard Independent Contracts."

What are the "Standard Independent Contracts"?

A What are Standard Independent?

Q Yes, what are they?

A Well, we have Standard Independents, you know, and you could say specifically an iron shop, high grade iron works, that is not part of the association. They are independent.

I could say Grossman, I could say Julius Mack. I'm talking about shops that I know of. They have Standard Independent agreements; they are not with any associations.

Q In other words, these companies are not affiliated with any of the associations?

A That is correct.

Q So that you were asking at this time the Wire Works Association to agree to accept either what the Allied accepted in the funds or what the Independents accepted in the funds?

A Correct.

Q What would happen if the Allied settled for something different than the Standard Independent?

MR. BLYER: Your Honor, I object to the hypothetical.

JUDGE GIANNASI: Sustained.

Q Section 33 of this stipulation, Mr. Matienzo, provides July 1, 1975 to June 30, 1976, and if a longer term contract is negotiated in the industry, then the parties shall adopt and accept the changes made for the period after the first year as outlined above.

In other words, this stipulation called for one-year settlement; is that correct?

A That is a one-year settlement and we settled with the industry, you see, the second or third or fourth or fifth year, whatever it may be, and then they would --whatever terms we settled with the industry, they would accept that, too.

Q When it says "in the industry," who is "the industry"?

A Well, the industry is the Allied and Independents.

Q Mr. Matienzo, you know that ultimately some of the independents settle for more money than the Allied, did they not?

A Yes.

Q In that case, who was the industry?

A What is the difference with money? You can't say what is industry. Ultimately, they all ended up even.

Q You know that is not the case, Mr. Matienzo;

is that right?

Allied settled for less than -- in January, 1976, than many independents settled for in July of '75; that is a fact, is it not?

A Right.

Q Then who is the industry that you refer to in this stipulation? Is it the Allied or the Independents?

A All right, we are talking about -- let us be specific, right?

We finally settled with Allied, with an average rate of thirty-five cents an hour. I'm talking about wages, right?

Now, the Independents gave sixty-five cents to the mechanics, but came this July we only gave the mechanics a nickel a raise and next year they will get thirty-five; so the second year of the contract we equalized the wages.

I will admit the guys that signed earlier had to pay a higher rate for the first part of the year, but as of the start of the second year, the wages evened.

Q I repeat, Mr. Matienzo, whom did you mean when you say the industry?

A The industry is all the iron shops, whether Allied or Independents, so that is hypothetical, too. The industry is everybody.

JUDGE GIANNASI: Did you write this document?

THE WITNESS: No, I didn't.

Q Did you discuss this with Mr. Bardy when you handed it to him?

A No. He said he wanted to study it. He didn't discuss it with me, no.

Q Did you discuss it with Mr. Kennedy?

A No, they didn't want to discuss it. They wanted to study it.

Q Now, there came a time when you had, you, meaning the union, had a meeting with the Wire Works Association on January 13, 1976?

A That is correct.

Q Thereweren't any meetings between June 24th and January 13th?

A No.

Q Did you request meetings, you personally?

A Yes, the first time I did and then from time to time formally I would see Mr. Bardy or Mr. Kennedy at the strike line.

If you say "generally" in terms, specifically saying did I sit down and meet with you, no, because every time I saw them they just said, "We can't give you the stipulation, and we are going to wait for Allied, until you settle with the trade. We are not going to give you what you want."

It was a strike.

Q When you saw them they did not ask you to set up a meeting and we should bring Mr. Colavito?

A No. If they did, they could have.

Q I'm sorry?

A They could have wrote us a letter if they were honest, if they wanted a meeting. They did not request any meeting.

Q What do you mean they could have written you a letter? Did they ask you or not ask you?

A Verbally?

Q Yes.

A After July they had not asked for any meeting with me.

Q Now, at the January 13th meeting, why was Mr. Colavito present?

A Because I recall, as I said, at the June 24th meeting we saw that some of them said they wanted Mr. Colavito there, and I prevailed, I said, "Bill, you never been all these years; they always complain they never saw you. Why don't you come for once?"

He said, "Okay. All these years, I will come." That is the reason why.

As what is called — well, I wouldn't say a personal favor, but I just said, "Why don't you? These fellows, they deserve some respect and you should come."

So he said, "All right, I will."

Q Was it not a fact, Mr. Matienzo, that you and Mr. Colavito had decided that he would not attend any meetings until the Allied settled?

A I wouldn't say that.

Q You wouldn't?

A No. He was a very busy man. He was a very busy man.

Q Now, there were meetings on January 13th and January 19th; is that correct?

A Yes.

Q Did Mr. Colavito come late to one of these two meetings?

A I'm not sure, but, you know, you call two o'clock meetings and by the time it is three o'clock before you ever--I wouldn't say whether he was a few minutes late or I was a few minutes late or one of those fellows were late. Just like everything else.

Q Is it not a fact, Mr. Matienzo, that the letter from Acme purporting to resign from the Association was dated August 11th, and isn't it a fact it was given to the union at the January 13th meeting not the January 19th meeting?

A No, given to us at the January 19th meeting.

The first meeting it was not given to us.

Q Who gave you the letter?

A Who gave us the letter?

Q Yes; what individual gave you the letter?

A Mr. Kennedy handed it to us.

Q Was it not a fact Mr. Bardy handed it to you?

A No, Mr. Bardy was there. They were both sitting next to each other.

Now, whether he gave it to him and Tom handed it back and forth, or whether they were together, I don't know, but they were both at the head of the table.

You want to be specific, say what hand touched it, but it came from the spokesman group of the Association.

Q Mr. Bardy was present when the letter was handed to you?

A Yes.

Q Now, previously you had mentioned that you knew of the four employees of Acme at the time of the strike and you named the four employees.

A Yes.

Q You testified that Mr. Dougherty you knew to have been working during the strike, and Mr. Diaz you had heard was working during the strike?

A Yes.

Q Incidentally, did any of the four employees of Acme picket Acme at any time during the strike?

A They may have, I don't know.

Q Do you recall seeing it?

A No, I have not seen -- I have not been there much myself.

Q Martin Hammel was another employee of Acme?

A Yes.

Q When was the last time you saw Mr. Hammel?

A Before the strike.

Q Mr. Hammel is a very sick man?

A Yes.

Q And Mr. Hammel is in no position to return to work; is that not a fact?

A Well, I'm not a doctor. That is what he tells me, yes.

Q Mr. Frank Paradise was the fourth employee of Acme; is that right?

A Yes.

Q When was the last time you saw Mr. Frank Paradise?

A Just before the strike.

Q Just before the strike?

A Yes.

Q You haven't seen him since the strike?

A No.

Q And you certainly haven't seen him picket?

A No. I didn't see him since before the strike. Didn't see him picketing.

Q Do you know of anyone who has seen Frank Paradise since the strike?

A Well, some fellows in the trade said they had talked to him and seen him, yes.

Q Where was that?

A I don't know where.

MR. ISRAEL: I have no further questions.

JUDGE GIANNASI: Any redirect?

MR. KREISBERG: No questions.

REDIRECT EXAMINATION

BY MR. BLYER:

Q Before the strike began, Mr. Matienzo, in response to your question or your inquiry of the Association, had they ever given you any specific proposals with regard to what they were willing to pay in terms of wages or the funds?

A None at all.

Q Now, you said that the Wire Works had been considered as a cousin to the Allied group; is that correct?

A That's right.

Q And you also made reference to the fact that they attended meetings of the Allied group in the past.

A Yes.

Q Were you aware of whether or not they were attending meetings of the Allied group when they began the Allied meetings in early June or late May of 1975?

MR. ISRAEL: Objection, Your Honor, unless we specify as to a representative of the Wire Works, a member of the Association, or members.

MR. BLYER: Any member.

JUDGE GIANNASI: All right, be specific.

Q Any member of the Wire Works Association, were they attending at the Allied meetings in the '75 negotiations?

A Well, to be specific, when I said meetings, I say they attended the Allied meetings, that is a meeting that Allied has with their employees. They don't sit down with negotiations with Allied, but they do attend the Allied meetings that the Allied -- with their group.

MR. ISRAEL: Objection, Your Honor, unless we specify whom we are talking about.

MR. BLYER: Listen to the question. I have the same problem.

Q The Judge asked a question and you used the word "they." Who was it who attended these private, I guess you would call them, employer meetings?

A Well, in the past--

Q Not in the past.

A Right now Mr. Jerry Bardy attended the Allied meetings.

Q In '75?

A Yes.

Q And these meetings were going on while you were negotiating with the Wire Works?

A That's right.

Q And the meetings that they attended you are saying are the employer meetings where the members of the Allied group met and discussed what had been proposed at negotiating sessions?

A That's right.

JUDGE GIANNASI: How do you know that Bardy attended the Allied meetings?

THE WITNESS: Well, other employers told us this, and also Mr. Bardy told me. He did. He also, Mr. Bardy also told me he attended meetings of the employers of the other independent groups; he attended all of them.

JUDGE GIANNASI: Do you know in what capacity he attended those meetings?

THE WITNESS: Well, do I know?

JUDGE GIANNASI: Do you know?

THE WITNESS: That is specifically, no. All I know is what the other employer told me, he had seen him at the meeting, and based on the fact that Mr. Bardy himself had told me that he went to these meetings.

Whether that is a fact, I can't say I was sitting at the meeting and saw him come in. I was not at that meeting.

Q Mr. Matienzo, the Judge asked you if you knew in what capacity he was attending.

A They just go in to get the report.

Q Just to listen, in other words?

A Yes, that's right.

Q Do you know one way or another whether before the strike the Allied had been told by Local 455 what it wanted specifically in wages; do you know one way or the other?

A No. Before the strike?

Q Yes.

A No.

Q You don't know if Local 455 gave them a specific proposal on wages?

A We gave them -- not specific, no. Just before the strike, to my knowledge.

Q Well, only testify if you know.

A To what I -- I believe they did make a specific offer just prior to the strike, was that 75, 65, 55 offer, just prior to the strike.

Q Seventy-five cents for a mechanic, sixty-five cents for --

A That might have been just the last minute. It was rejected by the Allied.

Q That was a union proposal which was rejected?

A Yes.

Q On the funds, do you remember if there was any specific percentage presented to the Allied before the strike?

A No, except what was the four percent annuity and to sit down and ask for substantial -- I don't know, I guess just an increase in the funds because of the--you see--

Q No, no, don't just--answer the question.

JUDGE GIANNASI: Answer the question.

Mr. Matienzo, I think it would help if you just answered the questions and try not to go ahead and let counsel get the answers out of you.

THE WITNESS: I keep forgetting. All right, I'm sorry.

8 Q Did the Wire Works Association at any time ever object to the union not being any more specific on what you wanted in wages other than to say in your proposal that you wanted a substantial increase? Did they ever object to that?

A No.

Q In the stipulation that you offered in early July to them, with regard to that stipulation, by this time had certain Independent employers already signed up?

A That is correct, they did.

Q And what had they agreed to in terms of the funds?

A They had agreed to that four percent on annuity.

Q Yes?

A And also agreed whatever we had worked out with the industry, they would go along with it.

Q That was with whatever you worked out with the Allied, they would go along with?

A That's right, the Allied.

Q Therefore, in early July when you presented this stipulation you were specific about the funds in the sense you were saying you wanted a four percent increase in annuity and whatever the Allied would agree to in the future?

A Right.

Q Did they object to that?

MR. ISRAEL: Objection, Your Honor.

JUDGE GIANNASI: Sustained.

I think it is in the record that that proposal was rejected. I don't understand your question otherwise.

MR. BLYER: Well, I will rephrase the question.

Q At any time did the Association ever say to you that they wanted to discuss the various funds with you and not wait for the Allied to decide the funds?

A No.

Q Over the years, what has been the pattern with regard to those funds and your signing up with the Wire Works Association?

A Been a pattern, whatever we had settled with Allied with regard to the funds, they would go along with it.

Q Now, there is a reference in one of the stipulations to the Allied, to the word "industry," and then I think it says Allied or the Independents; isn't that correct?

A Yes.

Q Now, in the past the economic package that has been agreed upon in the industry, has it differed among the various groups that you bargained with or has it been the same?

A Generally, it's been the same.

Q In the 1973 negotiations a contract was reached without Mr. Colavito?

A That's right.

Q And in the 1970 negotiations a contract was reached without Mr. Colavito?

A That is correct.

Q I guess the most significant officer in 1970 was the business agent, Mr. Tessler; isn't that correct?

A Right.

Q In 1970, the president did not participate?

A No, he did not.

Q The vice-president?

A No, the vice-president did not participate.

Q The financial secretary-treasurer?

A No, he did not participate then.

Q With regard to the four employees, when was the last time, when was it -- you said before you spoke to Hammel and he informed you that the doctor told him he could no longer work.

When was that, approximately?

A Approximately last February or March, '76.

Q Do you know the man's condition now personally? Do you know his condition?

A I, well, I know.

Q Have you spoken to him since then?

A Well, I believe--

Q Just answer that question. Have you spoken to him since then?

A Since--not since March. I know his condition in March, but I don't know it right now.

Q With regard to Mr. Paradise, have you spoken to him since the strike began?

A Since the strike began?

Q Yes.

A I have talked to him since the strike began, yes.

Q When was the last time you spoke to him?

A About near the end of March, too.

Q Did he indicate to you that he was no longer interested in working in the industry?

A Oh, no, he didn't indicate that.

JUDGE GIANNASI: What did he say? What did you talk to him about?

THE WITNESS: I talked to him -- you mean you want to know what I talked to him--

JUDGE GIANNASI: Paradise, did you talk to him about his job?

THE WITNESS: Yes.

JUDGE GIANNASI: What did you say and what did he say?

THE WITNESS: Well, he was asking me what is going on, and I explained to him Acme, and he told me that Joe sent him a letter or something to come back to work.

JUDGE GIANNASI: Who is Joe?

THE WITNESS: The boss; that is what he told me. He said he talked to Joe and he asked him if we settled a contract to go back for 455, and Joe told him no.

He says, "I'm not going back unless 455 is back there." That is why he won't go back to work there. He wants to stay with our union.

JUDGE GIANNASI: This conversation took place when, in March?

THE WITNESS: In March, on the telephone, not in person.

JUDGE GIANNASI: Have you talked to him since?

THE WITNESS: Not since March. I tried a few times. I understand he has a new job and has a new telephone number. I will have to try and catch up with him, but I haven't talked with him since.

MR. BLYER: Thank you, Mr. Matienzo.

Thank you, Your Honor. I have nothing further.

MR. ISRAEL: May I, Your Honor, one or two more questions.

JUDGE GIANNASI: Yes.

RECROSS-EXAMINATION

BY MR. ISRAEL:

Q Mr. Matienzo, you say you knew Mr. Hammel's condition in March. What was the condition in March as you knew it?

A Well, as he told me?

Q Yes

A That he has cancer.

MR. ISRAEL: No further questions.

JUDGE GIANNASI: All right, I have nothing further.

You may be excused.

Off the record.

(Discussion off the record.)

(Witness excused.)

JUDGE GIANNASI: On the record.

Call your next witness.

Whereupon,

JOSEPH BARDY

called as a witness, having been first duly sworn by Judge Giannasi, was examined and testified as follows:

JUDGE GIANNASI: Please be seated and give you name and address to the reporter.

THE WITNESS: My name is Joseph Bardy. I reside at 110-01 Myrtle Avenue in Richmond Hills, Queens.

DIRECT EXAMINATION

BY MR. BLYER:

Q Mr. Bardy, are you affiliated with any business?

A Yes. I'm connected with Bellis Wire Works.

Q And is there a Mr. Kennedy, Tom Kennedy, I believe, who is also affiliated with Bellis?

A Yes.

Q Are you one of the officers of that firm?

A Tom is an officer. I don't believe I am an officer.

Q But you are an owner in the business?

A I'm not an owner.

Q You are not?

A No, sir.

Q You are a manager?

A Yes, I'm in a managing position.

Q And with regard to the Association, the Wire Works Association, does Mr. Kennedy have a position in that Association?

A Yes, he is president.

Q And do you have a position in the Association?

A Not officially, no. It was generally an association with Tom in negotiations for our firm, Bellis Wire Works.

Q You both participated in negotiations through the Association with Local 455?

A Yes, we both did, yes.

Q Mr. Kennedy was the president of the Association; is that right?

A He is the president, yes.

Q And you had no position with the Association?

A No.

Q No official position?

A No official position.

Q But you assisted Mr. Kennedy throughout the negotiations?

A That's right.

Q And you spoke on behalf of the Association at those negotiations; is that correct?

A You are Mr. Blyer, right?

Q Yes.

A I was more there to represent Bellis Wire Works and Tom was more in the capacity to represent the Association. That is the way we pretty much had it worked out.

I was to be a little more partisan than he was.

Q You would be a little more partisan, you say?

A Yes.

Q Do you know anything about the makeup of the Association, whether it is a corporation or not?

A To the best of my knowledge, it is not a corporation. I mean in the sense that--you are referring to the existence of a--

Q Certificate of Incorporation.

A Yes. I don't know, to tell you the truth, Mr. Blyer. Mr. Weiss was the head of the Association before Tom. Mr. Weiss died in July of '75, and he also possessed many of these facts, and, unfortunately, many of his papers were never recovered, either from his residence or from wherever he had them.

Now, whether there was a constitution and bylaws or anything like that, it was claimed by my employer, who had been in the industry for some fifty years, that there was bylaws, but, unfortunately, now my employer is 76 years old and he is saying to the best of his recollection, so, I mean, you have to take it from there.

Our group was more informal than it was formal.

Q Well, you have been served with a subpoena, have you not, for a copy of the bylaws of the Association?

A Yes, I have, yes.

Q Are you able to produce them?

A I was not able to secure them, no.

Q Whom did you inquire of?

A Mr. Weiss' relatives. He was a bachelor and he had a sister, and, of course, my employer, because Mr. Weiss worked for my employer.

Q Mr. Kennedy told you that to the best of his knowledge there were such bylaws?

A Mr. Kennedy didn't tell me that; Mr. Bardy did, John Bardy, he is my employer.

Q You are Joseph Bardy?

A That's right.

Q Who is John Bardy?

A He is my employer. He is also my uncle.

JUDGE GIANNASI: This is for Bellis Iron Works?

THE WITNESS: Bellis Wire Works.

Q Is John Bardy a member of the Association?

A Yes, the firm is, Bellis Wire Works, yes.

Q Was John Bardy involved in negotiations?

A He didn't take an active participation in negotiations.

Q So it was John Bardy who told you that and he is a 76 year old man you referred to?

A Yes.

Q For his many years in the Wire Works Association, he says that to the best of his knowledge there were bylaws, but he doesn't know where it is?

MR. ISRAEL: Objection, Your Honor. I think this is hearsay at this point.

JUDGE GIANNASI: I think that is what his testimony is.

Is that correct?

THE WITNESS: Yes. Because when I got the subpoena, I, of course, asked him, but you see, he has probably been in the industry the longest of anybody.

Q The business office of the Association is the same as Bellis, 307 Scholes Street?

A Yes. I think we use a different address on the letterhead. We have a couple of addresses there, and I think the address we use is 299.

Q Bellis is the same address as the Association?

A It is the same premises.

Q How long have you worked for Bellis?

A About twenty-five years.

Q Have you had any connection with the Association prior to these last negotiations?

A My first--I would say my first real connection with the Association on a negotiating level would be the prior two-year contract.

Q You were involved in negotiations for that?

A Yes.

Q Now, during the interim from '73, those negotiations, until '75, June 30th of '75, did you have anything to do with the enforcement of the collective bargaining agreement, to see that it was carried out?

A I really don't know what you mean.

Q Well, would grievances ever arise under the contract?

A Yes. As a matter of fact, there was.

Q Who would concern themselves with the grievances? Would it be the officers of the Association?

A Tom Kennedy was connected -- the Association was connected, and Tom Kennedy was connected through the Association as the president.

JUDGE GIANNASI: At what time was he president of the Association?

THE WITNESS: From the prior two-year contract.

JUDGE GIANNASI: Since '73?

THE WITNESS: Since '73, yes.

JUDGE GIANNASI: All right.

Q And he would get involved as president of the Association when grievances occurred?

A Yes.

Q Now, during the most recent negotiation, did you ever attend any meetings of the Allied group?

A Yes.

Q When do you recall first attending those meetings? Now, the contract, of course, expired June 30th of '75?

A Yes, I know.

It was after the contract expiration. Specifically --

Q And it was not before?

A An Allied Association meeting?

Q Yes.

A I didn't attend. No, I didn't, no.

Q Your best recollection is before you met, or did you meet on June 16th, and do you recall with Mr. Matienzo with regard to the Wire Works Association?

A June 16th? Yes.

Q Before that date you had not attended any Allied meetings; is that your best recollection?

A I can't be sure. I really can't. I don't think I did before that date.

Q Did you attend any meetings of the Independent Steel Fabricators Association before that time?

A Yes, yes.

Q You had been with them before?

JUDGE GIANNASI: Kennedy is an officer of Bellis Wire Works?

THE WITNESS: Yes.

JUDGE GIANNASI: What position does he hold at Bellis Wire Works?

THE WITNESS: I believe he is the secretary-treasurer.

MR. BLYER: I have nothing further, Your Honor.

CROSS-EXAMINATION

BY MR. ISRAEL:

Q Mr. Bardy, did you attend two meetings with Local 455 in June of 1975, negotiating meetings?

A Two meetings with Local 455 in June?

Q Yes.

A Yes.

Q Would that be June 16th and June 24th?

A No, no, it was June 16th and June 26th.

Q That is the date you have down?

A Yes.

Q But at any rate, there were two meetings that you attended in June?

A Two meetings, yes.

Q Now, in either of those meetings, was there any request by the union for the Association to produce signed authorizations from each member of the Association?

A Yes.

Q Which meeting was that?

A That was at the June 16th meeting.

Q Who made this request?

MR. BLYER: Excuse me, Your Honor, if we may, just can we have Mr. Bardy, as best he can, testify from his recollection, then if he can't, to consult his notes?

JUDGE GIANNASI: That is reasonable.

THE WITNESS: To the best of my recollection?

JUDGE GIANNASI: Yes.

MR. BLYER: And if you can't recall, I

think you will tell us, and with the Judge's permission you can look at your notes.

THE WITNESS: Okay.

BY MR. ISRAEL:

Q This was on the June 16th meeting?

A Yes.

Q Who made this request that the Association produce these authorizations?

A Bill Matienzo.

Q What do you recall him saying at that time with respect to these authorizations?

A Well, he wanted to know who we were representing in our Association.

Q Did he ask for any proof of who you represented?

A Yes.

Q What did he say?

A He asked us for--well, we told who we were representing. He expressed some doubt as to some of the members and he asked that we produce letters or documents or some sort of documentation stating that these members were to be represented by our Association, these shops were to be represented by our Association.

Q This was at the June 16th meeting?

A June 16th, yes.

Q Did the Association produce signed authorizations from certain of the companies who were members of the Association?

A Yes, to the best of my recollection, we produced them at the following meeting on the 26th.

Q Were these signed by representatives of the various employer members?

A Yes. Well, each of the letters, there was a short paragraph and there was a signature on the bottom of the principal.

Q Did you receive any such letter from Acme?

A No, sir.

Q Did you receive letters from the other employers other than Acme?

A Yes.

Q Did you hand these letters to Mr. Matienzo at the second meeting which you have down as June 26th?

A Yes, we showed them to Bill at the second meeting.

Some of the letters came in late, and we didn't have time to get copies made up of them. So I believe Bill wound up with some of my originals.

There was--I still have some of the originals. I think I have all of the envelopes and all except Acme.

Q Did you ever procure from Acme a written authorization?

A No, sir.

Q Now, at either of the two meetings, was there any discussion about having Mr. Colavito attend the meetings?

A Oh, yes.

Q When did that come up for the first time?

A That was right at the first meeting. In the past it has always been a sore spot that we could never get the president of the union down to negotiate with us, because we felt that that was the only way we could make any sort of meaningful negotiation.

When Bill and Frank Hernandez showed up at the first meeting, we immediately requested that the next meeting that we have that Bill would be there and that we were disappointed that he wasn't there for that meeting.

Of course, so many previous negotiations were made and Bill has never become part of them until the very end when it just became a matter of signing a piece of paper and having something pretty much dictated to you.

Q You say the first negotiations you attended was in '73?

A Yes.

Q Who was present for the union in '73?

A It was Bill Matienzo and John Zito.

Q Who is Mr. Zito, as you recall?

A Secretary of the local.

Q Did Mr. Colavito appear at the June 24th or June 26th meeting?

A No, sir.

Q Was there any further discussion about the fact that Mr. Colavito wasn't there at the second meeting?

A Yes. We expressed our regrets that he was not there, and that we felt that that was an indication that they did not come there to seriously talk about new contract.

Q Who said that?

A We all did. Our meetings, our negotiating meetings -- we don't have a negotiating committee. Our negotiation meetings are--generally, all the employers will come to them, so it is an open table discussion and everybody was unanimous in their disappointment that Colavito wasn't there and they felt that that was a significant thing, that they were not going to make any -- they were not going to be able to entertain any negotiating at that meeting without Colavito.

Q Was this expressed to Mr. Matienzo?

A Yes.

Q What, if anything, did he say?

A He said that Bill was very busy and that he would try to get him down to the next meeting, but he wasn't promising anything.

Q Mr. Bardy, during the course of the strike, until January, did you repeat this request at any time to Mr. Matienzo?

A Would that be after the June --

Q After July.

A After July?

Q After July 1, did you ever repeat this request to Mr. Matienzo?

A To the best of my recollection, we did have some offhand discussion, or rather, informal meetings. Whether it was because he was dropping something off at the office or whether I talked to him on the telephone, but we always said the same thing, we are consistent, that we wanted Bill Colavito down to the meetings because that was the only way we thought we could get anywhere.

Q Mr. Bardy, before or after, before the strike or after the strike started, did you at any time tell Mr. Matienzo that you didn't want to sit down any further in negotiating sessions until the Allied settled its contract with Local 455?

A Did we say that?

Q Yes.

A No, sir, absolutely not. That has always been a sore spot with our organization. We have always been the tail on the dog. It's always been --

MR. BLYER: Your Honor, the witness has answered the question, I believe.

JUDGE GIANNASI: If that is an objection, I will overrule it. I want to hear that.

Go ahead.

A (continuing) Our organization has always taken a hind seat to the much larger Iron Association and prior to this last negotiation there were two -- there was only one major group, the Allied. A bunch of them are independent iron shops, and our association, Wire Works, and the thrust has always been to sit down and bargain and negotiate with the Allied group of shops, and then you got-whatever was negotiated with them was given to you to sign or strike.

That was the long and short of it.

We rarely had -- up until January of -- January 12th, 13th of this year, we never really had a negotiating session with Local 455.

We have never been able to make--

MR. BLYER: Your Honor, I object to the conclusionary remarks.

JUDGE GIANNASI: I think I can assess the conclusionary remarks and separate it from the testimony.

Q After the strike, the strike of July 1, did you and Mr. Kennedy ever request any further meetings, meetings with 455?

A To the best of my recollection, I don't think we did. When we left the 26th, the meeting on the 26th, it was after having considered a stipulation, one sheet printed form which had some rules and regulations on it that were taken from a larger form of proposals that we had received previously, and that was where it was; sign, or if you want to sign call us up and we will send a man down and you can sign and we will have a stipulation ready for the time when the Allied concludes their negotiation.

It has always been a matter of we will hang on to whatever is developing with the Allied.

Q Mr. Bardy, I would show you this document marked General Counsel's Exhibit No. 15.

Is this the proposed stipulation that you just referred to?

A Yes.

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Q When was that stipulation first handed to you? Was that mid-July?

A That was in the June 26th meeting. That is when we got there.

Q I show you this document marked General Counsel's Exhibit No. 13.

It is marked Proposed Agreement. I will ask you, have you ever seen this document before?

A Yes.

Q When did you receive that?

A We received this prior to the June 16th meeting.

Q Is it possible you received the stipulation in mid-July after the 24th and 26th meeting?

A We received the stipulation.

Q That stipulation which I showed you before?

JUDGE GIANNASI: The first document.

A This one? No. I went over my records in the waiting room and we received this one at the June 26th meeting. That is when we got it and we already had the proposals prior to that because this was based upon the proposals.

This is the document that was given us to sign and that is why -- that was the last word from the union, "If you fellows are ready to sign, call us up, we will come down and send a representative down and sign."

Q Did Mr. Matienzo ever discuss the Allied negotiations with you?

A Well, we usually engaged in discussion at the two meetings that we had.

As a matter of fact, that's all the meetings were, were discussions, and we invariably talked a out the two other parallel negotiations that were supposedly going on, the Standard Independents and the Allied.

Q Did the union say anything or Mr. Matienzo say anything about the Allied negotiations?

A Yes. The things that he related was that they were still very far apart, and I think on one occasion he said that Bill walked out on him because of some sort of demand that was some distance, some far apart.

It was a very pessimistic report as far as Allied, their meetings with the Allied.

Q During the course of a strike did you have occasion to have discussions with Mr. Matienzo outside of any formal meetings?

A Oh, well, I think that where we adjourned a meeting and we left, we may have made some small talk going out.

Q After the strike?

A After the strike.

Q After -- between July 1--

A After June 30th?

Q Yes, did you have occasion to see or speak to Mr. Matienzo?

A Oh, no, no, no.

You mean before January?

Q Before January.

A 13th?

Q Yes. Did there come a time in 1975 when you had discussion with Mr. Batthaney about Acme's membership in the Association?

A Yes. Well, Joe --

Q When you say "Joe," who is "Joe"?

A I'm sorry, Joe Batthaney. He was pretty much handling the matters in negotiation for Acme, and he had expressed a very pessimistic attitude very early on.

When I say "early on," we had an informal meeting amongst our group, our members, on July 15th.

Can I consult my records?

JUDGE GIANNASI: No, just answer the question that has been asked you by counsel.

You are drifting a little bit. I'm not sure it is related to counsel's question, so --

THE WITNESS: Would you repeat your question?

(The reporter read the last question.)

A He expressed a desire in 1975 to not be a part of our organization.

Q First of all, can you fix a time as best you can?

A Yes. I would say July 15th of '75, which was a meeting, an informal meeting amongst our group to discuss negotiations.

Q Was this discussion between you and Mr. Batthaney?

A It was a general discussion of all members.

Q When you say he expressed a desire, to whom did he express this desire?

A Well, to Tom and myself, because he felt that we were doing--we would be doing the lion's share of the bargaining.

JUDGE GIANNASI: This is July 15th?

THE WITNESS: July, yes.

JUDGE GIANNASI: July 15, '75, that is after the expiration of the contract?

THE WITNESS: After the expiration. We--well--

Q What did Mr. Batthaney say and what did you say and what did Mr. Kennedy say at that time?

A Mr. Batthaney said that he felt that it was just going to be a repetition of what has happened in the past, that he couldn't see us getting anywhere with the union, and he felt that there must be some other alternatives that he didn't know at the time what it could possibly be, but we should be prepared, that he wasn't going to become a part of our negotiations.

Q Mr. Bardy, was that subsequent to the time that you had received the stipulation which is in front of you, proposed stipulation?

A Subsequent to that.

Q Was it subsequent?

A Yes, subsequent to both.

Q Both documents?

A Yes.

Q Now, did you ask him --

JUDGE GIANNASI: Let me just read into the record, subsequent to receiving G. C. Exhibit 13 and G. C. Exhibit 15.

Q Incidentally, had both those documents been discussed at the July 15th meeting?

A Yes.

Q Was it at the conclusion of that discussion that Mr. Batthaney made a statement to you?

A Mr. Batthaney had attended the previous meeting where we had discussed proposals. That is, I don't know what you are --

JUDGE GIANNASI: General Counsel's Exhibits

13 and 15, I believe.

THE WITNESS: General Counsel, this one is the 13th.

JUDGE GIANNASI: The multi-page there, General Counsel's Exhibit 13. That is the union proposal.

THE WITNESS: General Counsel's Exhibit 13 was discussed at a prior meeting.

On the July 15th meeting, General Counsel's proposal or --

JUDGE GIANNASI: 15.

THE WITNESS (continuing): -- was discussed which was pretty much -- I would -- well, I shouldn't assume because you don't want me to assume.

Q Was Mr. Batthaney's statement to you on the 15th the statement to the group on the 15th at the culmination of a discussion on the 15th?

A Yes.

Q Now, was there any discussion about the submitting of a letter of resignation?

A At that time, no.

Q At a subsequent time, was there any discussion about submitting a letter of resignation?

A At a subsequent time?

Q Yes.

A Yes.

Q Now, at the time he spoke to you on the 15th, did you or Mr. Kennedy tell him that a written resignation was necessary under any rules or regulations of the Association?

A At what time was that?

Q On the 15th of July.

A No.

Q Do you know of any rules --

JUDGE GIANNASI: Wait a minute. You were going to --

THE WITNESS: We didn't get into any discussion of mechanics.

Q At that time?

A Right.

Q As of this date, Mr. Bardy, do you know of any rules or regulations, bylaws or other documents relating to the Association which require resignations to be in writing?

A No.

Q Have you ever seen any written rules, regulations or bylaws of the Association?

A No.

Q At a subsequent time was there a discussion about a written resignation?

A Yes.

Q When was that?

A Well, we had been contacted by the union for a meeting on January 13th, and it came to me that since Joe was not going to become a part of our negotiations, that he had better submit that expression in writing and give me some sort of letter saying that he would not be a part of our group any more because, otherwise, they were going to assume that he was included in our group even though he wasn't there.

So I called him up and asked him to prepare a letter of resignation or get me a letter of resignation and I went over and got it.

Q Was that the first discussion concerning a letter of resignation since July 15th when he discussed resigning with you?

MR. BLYER: Your Honor, I object to that last question.

JUDGE GIANNASI: I sustain the objection. I think you are assuming or you are concluding from the testimony that there was a discussion about resignation.

It might be open to argument on your part in briefs, but I think that it would be a little bit unfair to hurl a question at the witness.

Q Was there any discussion at all after

July 15th with Mr. Batthaney concerning either his resignation from the Association or withdrawal from the Association prior to your discussion with him on January 13?

A No.

Q You say, if I recall, you went over there and got it; is that what you testified to?

A Yes.

It was--the time was too short before our meeting and I felt that if he had mailed it, we wouldn't have gotten it in time, so I went over and picked it up.

His shop was not far from us.

Q Mr. Bardy, I will show you General Counsel's Exhibit No. 8, and I will ask you if this is the document you picked up, or a copy of the document you picked up?

A Can I go into my records and compare it to the original?

JUDGE GIANNASI: No, you may answer the question as best you can.

A (continuing) To the best of my recollection, it is a copy of the document.

Q When you picked up the document with the word "Receipted January 16, 197[illegible] J. G. Bardy, Wire Work Manufacturers," there seems to be a cutoff. Were they already on the document?

A No, no.

Q To the best of your recollection, what was the day you picked up that document?

JUDGE GIANNASI: From --

Q (continued) From Mr. Batthaney?

A January 12th, '76.

Q Now, Mr. Bardy, in the lower right-hand corner of this General Counsel Exhibit, the words "Received January 16, 1976, J. G. Bardy, Wire Works Manufacturers Association."

Now, the J. G. Bardy, that is your signature?

A That is my signature.

Q Were the rest of the words written by you?

A It is my writing.

Q Now, did you in fact receive the original of that document on January 16th?

A No.

Q Did you write "Received January 16, 1976"?

A I certainly did.

Q Do you recall what day you wrote "Received January 16, '76" and then signed the document?

A What day of the week?

Q What date of the month?

A Oh, to the best ofmy recollection, I wrote that on the 13th of January and God help me, I don't know why I wrote that, why I used the 16th. It has got to be a mistake for there was no reason for me to write the 16th unless it was at the January 13th meeting, because there--that--well, I wouldn't go into that.

Q Mr. Bardy, referring you to the January 13th meeting, was that the first meeting with the union in January?

A Yes.

Q Was there a subsequent meeting on January 19th?

A Yes.

Q At the January 13th meeting was there a discussion concerning the fact that Acme claimed no longer to be represented by the Association, the January 13th meeting?

A Yes.

Q How did that come about and what was said?

A Well, we gave in the letter resignation at the January 13th meeting --

Q Whom did you give it to?

A We gave it to Bill Matienzo.

Q Was Mr. Colavito there at the time?

A At the time, no. Mr. Colavito came later. He wasn't there when we first started the meeting.

Q What did you say and what did Mr. Matienzo say at the time you gave it to him?

A Well, Mr. Matienzo said, I think he used the words to the effect, "I don't know what Bill is going to say about this," and he put the letter down on the table.

Q Was that the discussion with Mr. Matienzo prior to the time Mr. Colavito arrived?

A Yes, that was the substance of the conversation.

Q What happened when Mr. Colavito arrived concerning this matter?

A Well, Bill showed him the letter immediately and Bill indicated that he wouldn't accept it.

JUDGE GIANNASI: Bill? You have two Bills.

THE WITNESS: I'm sorry; Colavito.

JUDGE GIANNASI: Colavito said he would not accept that letter?

THE WITNESS: Yes.

Q What, if anything, did you say?

A I don't recall having said anything in response to that because if he refused to accept it and we had other matters to go into, it was just a matter of him not wanting to accept the letter.

Q Now, did Mr. Colavito retain the original letter?

A No, I got it back.

Q Did you give Mr. Colavito a copy of the letter at that date?

A Not at that date, no.

Q Did you give Mr. Colavito a copy of the letter at any subsequent date?

A Yes, at the 19th. To my recollection, he took both documents, that is, the final signed stipulation and the letter of resignation out in the hotel and made copies of it.

JUDGE GIANNASI: When was this?

THE WITNESS: The 19th of January.

JUDGE GIANNASI: If you don't mind, counselor, let us stick to the 13th of January and try to trace that letter.

So far on the 13th of January you have a letter without the writing and you had Colavito saying that he wouldn't accept it.

THE WITNESS: Yes.

JUDGE GIANNASI: If you will indulge me, counsel.

Did there come a time at the 13th meeting that you did write what is written on General Counsel's Exhibit 8?

THE WITNESS: I don't believe I wrote that at that meeting, at that meeting, to the best of my --

JUDGE GIANNASI: What happened to the letter after Colavito looked at it and said it wasn't acceptable; what happened to the letter?

THE WITNESS: I got it back.

JUDGE GIANNASI: All right. At that point there was only one copy of the letter?

THE WITNESS: Yes.

JUDGE GIANNASI: And you got it back?

THE WITNESS: Yes.

JUDGE GIANNASI: All right.

BY MR. ISRAEL:

Q Did you at that meeting give Mr. Colavito any copies of that letter, the meeting on the 13th?

A I think I would have made copies of it though. Going to that meeting, having had it in my possession and I can't -- I am really not clear on that point. This whole thing has got me very confused.

Q Mr. Bardy, the words "Received January 16, 1976," were they written by you on the original letter?

A No, no, no, no.

Q Were they written on a copy of the letter?

A I don't know.

Q Do you have the original letter with you today?

A Yes, I do.

Q May we see the original letter?

JUDGE GIANNASI: I would like to see that. Go ahead. We can be off the record.

(Discussion off the record.)

JUDGE GIANNASI: On the record.

MR. ISRAEL: May we have this marked as Respondents' Exhibit No. 1, I guess.

(Document marked Respondents' Exhibit No. 1 for identification, of this date.)

Q Mr. Bardy, can you identify this document which has been marked Respondents' Exhibit No. 1 for identification?

A Yes, that is the letter of resignation I received from Mr. Batthaney.

MR. ISRAEL: I offer this, Your Honor.

MR. BLYER: No objection.

JUDGE GIANNASI: Respondents' Exhibit 1 will be received into evidence.

(Respondents' Exhibit No. 1 for identification received in evidence, of this date.)

JUDGE GIANNASI: Is that the original letter that was signed and given to you by Mr. Batthaney?

THE WITNESS: Yes.

JUDGE GIANNASI: Was this also the letter that you got back from the union representatives

I showed that letter or a copy of that letter.

Q Is there any doubt in your mind that you showed either that letter or a copy of that letter?

A No doubt.

Q Let me finish the question, please.

To Mr. Matienzo, Mr. Colavito, on January 13th?

A No doubt, no.

Q And that you showed the letter or a copy at the first meeting with the union in January?

A Yes.

Q Now, the words on General Counsel's Exhibit No. 8, "Received January 16th," you do not recall when you wrote those words on a copy of the letter?

A It is my impression that I wrote that on January 19th.

Q Mr. Bardy, do you recall, regardless of the date, writing those words?

A Do I doubt whether I wrote them?

Q Do you recall, regardless of when you wrote it, do you recall writing those words?

A Yes, I recall writing them.

Q Are you clear in your mind that it was written at a meeting with the union in January?

A Yes, it was written at a meeting with the union in January.

Q Who requested that you write that?

A To the best of my recollection, I think Colavito asked me to write that.

Q But you don't recall whether you wrote that on the 13th or the 19th, but you think it is the 19th; is that correct?

A Yes.

Q Did you retain a copy for yourself of the letter with this writing on it?

A Yes, I think I did.

Q Do you have that letter?

A Can I check?

JUDGE GIANNASI: Well, you can check. Off the record.

(Discussion off the record.)

JUDGE GIANNASI: On the record.

Q Mr. Bardy, I show you General Counsel's Exhibit No. 8 again, and I will ask you if you have retained in your records a copy of this letter containing the words written in the lower right-hand corner on it?

A No.

Q You do not?

A No.

Q Is there any question in your mind as to the fact that you received the letter dated August 11th from Acme prior to the first meeting with the union on January 13th?

A Would you mind repeating that question?

(The reporter read the last question.)

A I didn't receive the letter prior to the meeting--on what date?

Q January 13th.

A There is no doubt in my mind that I received-- I received it prior to the January 13th date.

Q January 12th?

A January 12th, right.

Q Have you any explanation at all as to why you wrote the words "Received January 16, 1976," on a copy of the letter that is signed?

A Not unless it was a mistake by me and the number -- the 16th.

Q Is it a mistake, Mr. Bardy?

A It would seem to be a mistake.

Q Did you receive this letter dated August 11th on January 16th?

A No, no; to the best of my recollection, I received the original letter on January 13th -- 12th, 12th, the date before the meeting.

Q Now, the conversation with Mr. Colavito concerning the letter, was that between you and Mr. Colavito or Mr. Kennedy and Mr. Colavito?

A That was between myself and Mr. Colavito.

Q Were you present at any discussions between Mr. Colavito and Mr. Kennedy concerning this letter?

A No, I was not.

Q Were you present at all times during both meetings on the 13th of January and the 19th of January?

A At all times?

Q Yes.

A Well, yes, at all times, barring having to leave the room for some necessarily bodily functions.

Q Did Acme or a representative of Acme attend either the January 13th or the January 19th meeting with the union?

A I'm sorry. I didn't get that.

Q Did a representative of Acme attend either the January 13th or the January 19th meeting?

A Oh, no, no.

Q Did the Association continue to have association meetings, formal and informal, from July 15th up until January 13th?

A Yes.

Q Did a representative of Acme participate in any Association meetings after July 15th?

A No.

Q Prior to January 13th, did you advise the union as to the substance of your conversation with Mr. Batthaney on July 15, 1975?

A On July 15th?

Q Prior to January 13th, which is the time you say you handed the letter to Mr. Batthaney, had you advised the union of the substance of your conversation with Mr. Batthaney which was held on July 15th, I believe you testified?

A Yes. As a matter of fact, I believe I talked to Bill on the telephone.

JUDGE GIANNASI: Bill who?

THE WITNESS: Bill Matienzo, Mr. Matienzo of Local 455, setting up the meeting or agreeing to the meeting on January 13th, and at that time I think I mentioned a letter of resignation from him.

That would have been the 12th or maybe even the 13th, I don't know, but he may have been calling me on the weekend. I'm not sure of the days now, but I seem to recollect a telephone call that I mentioned to Bill about the letter of resignation and bringing it along with me, along with an arrangement for the meeting that was held on January 13th.

JUDGE GIANNASI: Did you call him or did he call you, Matienzo?

THE WITNESS: Yes, I believe I called him.

JUDGE GIANNASI: Why would you call him?

THE WITNESS: That's what I'm trying to figure out.

JUDGE GIANNASI: If you can't recall, you can't recall.

THE WITNESS: I really can't.

JUDGE GIANNASI: You cannot? All right.

THE WITNESS: Those things are very indistinct

MR. ISRAEL: I have no further questions.

JUDGE GIANNASI: Redirect?

MR. BLYER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. BLYER:

Q Mr. Bardy, do you recognize General Counsel's Exhibit No. 6?

A Yes, yes.

Q Is that your signature at the bottom?

A Yes, it is.

Q And attached to it is a list of the employers who the Association purports to represent; is that right?

A Yes.

Q One of the names included there is Acme?

A Yes.

Q Now, this was on May 29th of '75. At least the letter is dated May 29th, '75.

A Yes.

Q Do you recall sending this by mail to the union or handing it to them? Do you remember which?

A A No. We sent it by mail.

Q So they had this prior to June 16th when you first met?

A Yes, I believe so.

Q And it is your testimony that nonetheless they asked you for further proof on who you represent?

A Yes, documentation.

Q Do you have any of that documentation here?

A I have some of it, Mr. Blyer.

Q All right. I don't want to see it. I just asked you if you had it, that is all.

Now, you are saying to me that, or I think it is your testimony that you were able or you received documentation, some sort of authorization from each employer permitting the Association to bargain on their behalf other than Acme for Acme?

A Yes.

Q So that you received it from seven employer members; is that correct?

A I believe so, yes.

10 Q And the eighth is Acme, according to the May 29th letter?

A Yes.

Q Now, it was on the 26th that you said you showed these documents to Mr. Matienzo, is that correct?

A Yes.

Q And you said he took some of your originals?

A Yes.

Q After receiving those documents on the 26th, did Mr. Matienzo ever tell you as far as he was concerned Acme was not being represented by your Association?

A No.

Q Did he ever ask Mr. Batthaney to leave on the 26th? He was there negotiating, wasn't he?

A Yes, he was.

Q Did he ask Mr. Batthaney to leave?

A I'm sorry, I say yes. You said negotiating. We didn't consider it a negotiation.

Q Use my words for the time being.

At the meeting on the 26th, Mr. Batthaney was there, right?

A Yes.

Q Did Mr. Matienzo ask him to leave on the 26th?

A No, he did not.

Q He was there on the 16th, too, right?

A Yes.

Q He wasn't asked to leave that day either by the union?

A No, sir.

Q Now, I am a little confused on a subject.

After June 30th, did you ever speak with Mr. Matienzo again about any subject until either you called him or he called you in mid-January or early January to set up a new meeting?

Did you ever talk to him in person or by phone?

A I believe Mr. Matienzo called us to set up a meeting.

Q That is in January, right, to set up a January 13th meeting?

A To set up a January 13th meeting.

Q Before that, before that and after the last, what you call discussion, or negotiating session on the 26th, in between that time?

A To the best of my recollection, no.

Q You never spoke to him in between on the phone, on the picket line, at the shop, anywhere?

A Oh, I think I saw him, yes. I think he came around, yes.

It was a couple of times in front of the shop that he came around to check on the pickets.

Q And you talked to him?

A Yes. Yes, I'm sorry, you are right.

Q This January 13th or so telephone call, you now think it was Mr. Matienzo who called you?

A I think it was, yes.

Q And the purpose of that call was to set up a meeting for the next day or so; is that your testimony?

A Yes.

Q You testified that at the meeting of June 26th, you expressed disappointment that Mr. Colavito did not attend?

A Yes.

Q And you have now testified that you did speak with Mr. Matienzo one or two times after that when he was down at the shop, before he called you in mid-January to set up another meeting?

A Yes.

Q During those times what was your discussion?

A I think they were more germane to what was going on in the iron industry at the time. By the iron industry I mean the Allied, because there was ongoing negotiations with the Allied and with the Standard Independents.

Q Anything else that you remember you discussed?

A Oh, unless it was to answer, if he asked us if we were ready to sign the stipulation or not. That could be the only thing that we could probably have to say besides small talk.

Q Now, were you personally aware of the negotiations, the course of negotations and what was happening at negotiations that the union was having with Allied and the union was having with the Independent Association of Steel Fabricators from the outset, from when they began and sometime in probably early January?

A Yes, we were following those.

Q Were you aware of any wage proposals that were being put forward on any discussion on the funds or any other discussions that were going on, is that correct, from the outset?

A Well, yes, if there were any.

Q If there were any you were aware of those?

A Yes.

Q I show you what has been introduced in evidence as General Counsel's Exhibit No. 16. Do you recognize the signature at the bottom there?

A Yes.

Q That is Mr. Kennedy's, right?

A Yes, sir.

Q Read that letter to yourself, okay? Just to yourself.

A Yes.

Q Does that letter refresh your memory about another visit by Mr. Matienzo to your place of business?

A It certainly does intimate that.

Q Also look now at General Counsel's Exhibit No. 15, and I ask you the question; after reading General Counsel's Exhibit No. 16, when is your best recollection as to when you received General Counsel's Exhibit No. 15?

You earlier testified June 26th, I think.

A Yes.

Q When was it?

A This was the 26th.

Q You still say that after reading General Counsel No. 16?

A Yes. Yes, because unless there was another stipulation after.

Q That is what you seem to be saying, that there was another stipulation, not General Counsel's 15 that was given to you by Mr. Matienzo in mid-July.

A That is what it seems to say.

Q Is that your testimony?

A I don't know. I don't recollect.

Q This letter, General Counsel's Exhibit 16, does acknowledge receiving a stipulation.

The date here is July 15th of '75, right?

A Yes.

Q It is your testimony now that you don't think it was General Counsel's Exhibit No. 15?

A No, it wasn't this one.

JUDGE GIANNASI: But is it your testimony that a stipulation was received from the union at the June 26th meeting?

THE WITNESS: Yes.

JUDGE GIANNASI: And that is also your testimony after reading those documents, that there was another stipulation received later?

THE WITNESS: There is a possibility there was.

JUDGE GIANNASI: All right.

THE WITNESS: Unless it was the same one.

BY MR. BLYER:

Q You mentioned before that you didn't think that real negotiations--I think you used the words "real negotiations--would take place without Mr. Colavito; is that correct?

A Yes.

Q In '73, Mr. Colavito, did he attend meetings?

A No, he did not.

Q You wouldn't know what happened before that?

A Before '73?

Q Right. Personally, you wouldn't know, you may have been told, but personally?

A Personally, no.

Q Now, in '75, do you recall discussing with Mr. Matienzo, the desire of the Association to have the right to purchase certain types of paneling rather than to make it themselves?

A Subletting agreement, yes.

Q And that was something that the Association was anxious to have; is that correct?

A Among certain other things, yes.

Q That was something that you did attain; isn't that correct?

A Subsequently, we did get a form of it, yes.

Q And do you recall at one or both of the June meetings in '75, discussion on vacations, the subject of vacations?

A In June?

Q In June.

A We covered quite a few things. I would say yes, we probably did cover vacations because that was one of the standout things. Yes, I would say so.

Q Do you recall your position, at least the Association's position, as being you want the ability to determine when an employee who was entitled to five weeks vacation could take their fourth and fifth week?

A No, I don't believe that is what we discussed. I believe we discussed the fact that three weeks we felt was excessive, and that we would prefer to just have the man take--I think two weeks was the old contract, was two weeks, was obligatory as far as vacation was concerned, and that we wanted to maintain that feature of the contract.

Q And you discussed training fund at one of those two sessions, the school fund?

A An apprentice classification.

Q You were not satisfied with what was with that program with regard to wire workers?

A The existing apprentice?

Q Right.

A No.

Q You pressed that to Mr. Matienzo?

A Yes.

Q Do you recall during either one or both of those first two sessions, talking about the wages and the amounts, describing to Mr. Matienzo the percent increase that had been obtained by this union since 1965 in wages?

A We indicated the percent increase that the union had gotten since 1965, growth -- well, the thing I recall was in benefits rather than wages.

Q This was in fringe benefits?

A Fringe benefits, yes.

Q And you understood the union wanted even more in fringe benefits.

A Yes.

Q They wanted an increase in wages, too?

A Yes.

Q And you knew this in June of '75; isn't that correct?

A We knew that from the proposals, yes.

Q Now, you have already told me what you recall being discussed with Mr. Matienzo sometime in between the time of the end of the June 26th meeting and when he called you in mid-January.

Can you recall any other subject being discussed?

A Other than what I said?

Q Yes.

A No, I'm sorry, I can't.

Q Well, when was it, if at all, that you asked for Mr. Colavito to come down?

A It was at the 26th, June 26th meeting.

Q That was the last time you set up until he appeared on the 12th or 13th?

A No. I think I indicated before that in our small talk, when we encountered each other in front of the shop, we may have covered that subject, too, as far as the fact that why can't he get Colavito down to a meeting.

Q So you think it was, or was it one or two occasions that this happened?

A Probably one occasion. I wouldn't say more than one.

Q In part of the small talk, you say you mentioned, "Gee, when we meet again is Bill going to be there?" Or, "When we meet is Bill going to be there?"

A No, it was more a form of decrying the fact that Bill doesn't consider us important enough to attend our meetings.

Q I think you responded that you had no doubts that you went down to Batthaney and procured from him his resignation letter on the 12th of January.

A Yes.

Q After looking at your signature with the date January 16, 1976, can you still say you have no doubt?

A That is a distinct recollection to me that

I got it on the date that I said.

Q This was something that was very significant, the date was, was it not?

A Oh, I suppose dates are always.

Q No. In this particular case, didn't it have particular significance? [illegible]n't it your testimony you rushed down to get it because you didn't want to wait for the mail?

A Not so much the date, Mr. Blyer, with the fact that I had to get it before I went to that meeting.

Q Right. And if you were going to indicate any date on a document and you wanted to make sure that it indicated that you had received that document before the meeting, would you not have been careful to put down the correct date?

A Well, I don't know, because the meeting was so immediate, it was the following day, I don't know whether I would have because I assumed Joe had a date on the inside of this letter of resignation.

Q Now, what do you mean you assumed it was right on the letter?

A It was actually--I looked at it and it was there.

Q When you put in this date you say at least Mr. Colavito was present?

A On the 12th -- 13th, yes.

Q You wrote in 1/16 and Mr. Colavito was standing right there?

A No, it wasn't. He was standing there, right there and we were talking across the table and things were being passed back and forth.

Q Someone asked you to write down the date; isn't that true?

A Yes, I believe it was Mr. Colavito asked me.

Q And he was supplied with a copy of that, was he not, after you signed it?

A I believe he made the copies.

Q Well, after you wrote that there, you provided him with that document so that he could make a copy?

A Yes.

Q Or you gave him a copy, gave him that?

A I think I indicated before that I didn't recollect whether I brought copies to that meeting or not.

Q But you think you might have?

A I may have, yes.

JUDGE GIANNASI: I think we are talking about the 19th meeting?

MR. BLYER: No, I'm on the 13th meeting.

JUDGE GIANNASI: You are talking about the 13th meeting?

THE WITNESS: Yes.

JUDGE GIANNASI: It is your testimony now that you wrote the handwritten material on this document, which is General Counsel's Exhibit 8, that you wrote that on the 13th?

THE WITNESS: No, that is not my testimony.

JUDGE GIANNASI: When did you write this?

THE WITNESS: I felt that I wrote that on the 19th. That is my understanding of the earlier testimony.

Q Is that your testimony now, you wrote it on the 19th?

A That is my recollection.

Q So on the 13th, Mr. Colavito just refused the document is your testimony?

A Yes.

Q And then on the 19th you brought it up again?

A Well, on the 19th we sewed up the contract. Everything was being finalized and that was a part of -- in our estimation, that was part of the whole thing.

Q How did it come up again; who brought it up?

A I believe I did.

Q Mr. Colavito didn't?

A No. He was resistant to the resignation, I think.

Q Yes, and now you are saying he changed his mind and he accepted it?

A I don't know what he did. All I can tell you is we gave him, that he took the letter and made copies of it. This is his copy. This is --

JUDGE GIANNASI: Well, counsel, I am going to interfere here.

How did it come up again on the 19th? I believe you testified earlier as to what happened on the 13th. Now, how did that letter come up again on the 19th?

THE WITNESS: Well, after we finalized the negotiation and we signed the contract, I believe I asked him, what about this letter, the resignation of Acme.

JUDGE GIANNASI: What did he say?

THE WITNESS: And he says -- well, I don't recall exactly what he said, but in effect what it turned out to be, that we made copies, both the signed contract and the letter of resignation, and that is when I recall writing "Received January 16, 1976," but I don't know why I used the 16th. This is a little fuzzy in my mind.

JUDGE GIANNASI: Go ahead, counselor.

Q Is it a fact that you were aware after the meeting of the 13th that you had a very good chance at reaching a contract on the 19th?

A No.

Q You didn't believe that?

A No.

Q You still had doubts?

A Yes.

Q No one ever told you or suggested to you, did they, that that date that you wrote on there of January 16, 1976, was incorrect until quite recently?

A Yes.

Q Was that yes, nobody ever brought it to your attention that it was wrong?

A Just come to my attention recently as a matter of this meeting or this--

JUDGE GIANNASI: While you were testify-ng?

THE WITNESS: No. When I started to get the documents together to bring them down.

Q The subpoena called for that document, did it not?

A Yes.

Q That would have been about a week ago or two weeks ago that you started doing that?

A Yes, approximately. I think you had called prior to that, too. I talked to you prior to that.

Q Did Mr. Kennedy get a copy of that document, the resignation, the letter where you signed the January

16, 1976, having received it?

A No, I didn't get a copy. We have a common file.

Q Did you give a copy to Mr. Kennedy after you gave one to Mr. Colavito I am asking you.

A No, I don't believe I did.

Q Did you give it to anyone else besides Mr. Colavito?

A No, I don't believe I did.

Q Mr. Colavito never claimed that that date was wrong?

A No.

Q Is that correct, he never claimed it was wrong?

A No, the date didn't come up after I put it on there. It was never made an issue.

Q Mr. Matienzo never claimed that that date was wrong, did he?

A I don't believe we ever had any conversation about it after the January 13th meeting.

JUDGE GIANNASI: 19th meeting?

THE WITNESS: 13th, that is when we attended, when we gave it in. We first handed it, the original letter, to Mr. Matienzo.

Q On what date?

MR. GIANNASI: Are you talking about the letter, counsel; are you talking about the letter with the handwritten notation?

MR. BLYER: Yes.

JUDGE GIANNASI: We are talking about the letter with the handwritten notation which you wrote on and which handed around on January 19th. That is the letter that counsel is asking you about.

THE WITNESS: No conversation between Bill Matienzo and myself about that.

JUDGE GIANNASI: Let me ask this. After looking at that letter and identifying that as your handwriting, is it your testimony today that you received the original of that letter on January 12th, as you earlier testified, or on January 16th, as your handwriting indicates?

THE WITNESS: It is my recollection that I received it on the 12th.

JUDGE GIANNASI: Do you have any explanation as to why you wrote January 16th on this particular letter on January 19th?

THE WITNESS: The only explanation I can think of is that it is a mistake.

JUDGE GIANNASI: Let us cut off any further questioning on this letter. Let us get on.

MR. BLYER: I have one other question to ask, one other subject. It may get back to this letter, maybe not, but let me ask it anyway, Your Honor.

BY MR. BLYER:

Q Do you recall the meeting being set up on January--or you had a meeting on January 13th of '76?

A Yes.

Q You recall now Mr. Matienzo calling you to set up that meeting?

A Yes.

Q And is it your testimony that he called on the 12th to set it up?

A Yes, it is my recollection he called on the 12th.

Q What time of day?

A I think he called earlier and I had to get back to him at the union. I think he left a number to get back to him to verify.

Q Was that the first time you were aware that you were going to meet on the 13th?

A Yes.

Q And on that same day you say you visited Mr. Batthaney on the 12th?

A I visited Mr. Batthany on the 12th, yes.

Q You called him first?

A Yes.

Q You found him in?

A Yes.

Q Then you went down?

A Yes.

Q When did you call him up and reach him? It was on the 12th before or after Mr. Matienzo called you?

A It was after Mr. Matienzo called me.

Q Before you called him back to confirm the 13th as the meeting date was when you went to see Mr. Batthaney before--

A Before I called Bill back.

Q You went down in the afternoon?

A Yes.

Q You got the letter, you say?

A Yes.

Q Then once having procured the letter you called Mr. Matienzo back. Did you reach him?

A Yes.

Q At the union office?

A Yes, I believe I did.

Q Was he there or did he have to call you back?

A No, I think I reached him. Now you are asking me to remember too much. My recollection is that I reached him when I called him back.

Q And then you set up the meeting for the next morning?

A That's right.

MR. BLYER: That is all. Thank you.

MR. ISRAEL: Nothing further.

JUDGE GIANNASI: I would like to pursue this.

Did you discuss with Matienzo on the 12th in your conversation with him anything that you had done with respect to Batthaney, in getting a withdrawal letter from Batthaney?

THE WITNESS: My recollection is that I mentioned to Matienzo that I had a letter of resignation from Baffney from the Association.

BY MR. BLYER:

Q Now, let me ask you this. Did you call Batthane or did he call you on January 12th?

A No, I called him.

JUDGE GIANNASI: And what was the purpose of your call?

THE WITNESS: Well, I felt that Bill, having called, could very well mean a meeting was imminent and I wanted to get that matter cleared up before I went to the meeting.

JUDGE GIANNASI: What matter?

THE WITNESS: The matter of his resignation.

JUDGE GIANNASI: When had it last come up, the matter of hi resignation?

THE WITNESS: I really can't give you --

JUDGE GIANNASI: My notes indicate July 15th.

THE WITNESS: That would be the last day I can remember, that would be--

JUDGE GIANNASI: You testified as to some conversation that you had with Batthaney at that time.

THE WITNESS: Yes.

JUDGE GIANNASI: In your discussion with Batthaney, this was on the telephone?

THE WITNESS: Yes.

JUDGE GIANNASI: Can you tell me what you said to him and what he said to you, as best you can recollect?

THE WITNESS: I believe I said that I felt that we were going to have another negotiating session, and I think I said that after having waited so long something must be cooking because it has been about six months before our last contact with the union, and if we were going to sit down and be able to get Colavito there, I better have the letter of resignation.

If it was his intention to resign from the Association, because I needed some documentation to that effect.

JUDGE GIANNASI: What did he say?

THE WITNESS: He agreed with me and said to come over and pick it up.

JUDGE GIANNASI: Do you have any idea as to why the date August 11, 1975, appears on that letter?

THE WITNESS: No. Frankly, I felt very uneasy when I noticed that it was predated like that because it made my position somewhat sticky.

JUDGE GIANNASI: Did you notice it when you picked it up?

THE WITNESS: Yes, I did take it out of the envelope and I looked at it.

JUDGE GIANNASI: Do you have any conversation with Batthaney at that time?

THE WITNESS: I mentioned the fact that it was predated and that there is oging to be some fur flying over this at the meeting. But other than that I wasn't about to, you know, argue with him over it.

JUDGE GIANNASI: Well, was there any discussion as to why that date was on there?

THE WITNESS: No. It was late in the day and I wasn't about thestand on the street and argue with him over the date.

I told him I would hand it in at the negotiation and he is on his own.

JUDGE GIANNASI: Who is on his own?

THE WITNESS: I'm sorry; Joe Batthaney, he is on his own, whether they are going to accept it or not I don't know.

JUDGE GIANNASI: Did he say anything as to why the date August 11th appeared there?

THE WITNESS: He probably did, but I don't recollect whether it was a significant remark.

JUDGE GIANNASI: All right now. On June 26th, taking you back to the last meeting you had before the strike, was Batthaney at that meeting?

THE WITNESS: Yes.

JUDGE GIANNASI: Was there any discussion at that meeting about Batthaney's membership in the Association?

THE WITNESS: No, because we were meeting with the union at that meeting, the 26th, so we were talking more with the union. I mean, internal matters, and we usually recede for our informal sessions together with various shops.

JUDGE GIANNASI: I believe that is all I have.

Does this prompt anything further?

MR. BLYER: No, Your Honor.

MR. ISRAEL: No.

JUDGE GIANNASI: You may be excused.

(Witness excused.)

JUDGE GIANNASI: Off the record.

(Discussion off the record.)

MR. BLYER: I just have a few remarks I would like to make.

MR. ISRAEL: I don't think the record indicates that General Counsel rested.

MR. BLYER: Yes, I do rest my case.

JUDGE GIANNASI: You do rest?

MR. ISRAEL: The Respondent rests.

MR. BLYER: At this time, then, I just have a few remarks by way of closing statement.

I would like Your Honor to consider, of course, the opening statement, and I would like to have a few things, their having gone on since that time.

In the first place, I think it is quite clear that negotiations have begun on June 16th and that there were further negotiations on June 26; that it is not disputed that Acme pulled out before this time, pulled out from the Association, so no matter when you view this letter, this resignation, as having occurred, it didn't occur prior to the commencement of negotiations. If it had, of course, the union's consent would not be necessary.

But no matter how you view the facts on that, negotiations did begin as early as June 16th and therefore, this letter and this resignation could not have lawfully occurred without the consent of the union.

11 I would further suggest that, and I won't go into all of the details, that in fact the union was first advised of this on the 19th, and after the Association received it on the 16th.

As for the other issue in this related area, I would note that Acme--

JUDGE GIANNASI: There is no doubt as I view the evidence that the union was not notified until at least January 13th. There is some confusion as to whether it was January 13th or 19th, but certainly not before that.

I think in your opening statement you suggested that the evidence might show otherwise.

MR. ISRAEL: It does not. I concede it does not show.

MR. BLYER: I think it is also fair to say that --

MR. ISRAEL: Excuse me, Your Honor, I think

I misspoke myself. There is some evidence that may have been conversation on the 12th.

JUDGE GIANNASI: Of January?

MR. ISRAEL: Of January, when Mr. Bardy and Mr. Batthaney --

JUDGE GIANNASI: I certainly wasn't concerned with that, certainly not before.

MR. BLYER: I think also not in dispute is that the union at all times has objected to this withdrawal, and it is my position, and I think the evidence bears me out, that the withdrawal did not occur until after negotiations began, which would require the union's permission.

I think the law is quite clear on that.

I cited the cases of Retail Associations, Highway Billboards, City Roofing.

JUDGE GIANNASI: I would ask you both as to Becks Engraving as well.

MR. BLYER: That stands for the same position and also stands for the further proposition that I meant to address myself to, namely, that there has been no evidence in any way justifying the contract that was entered into with 810 at a time when it is General Counsel's position that Acme had an obligation to bargain with 455 because 455, by virtue of its long history of contracts with this Association, was entitled to the presumption of majority status.

No evidence was introduced that would negate that presumption.

Other evidence could be introduced that might buttress that presumption that I thought might be introduced to show perhaps some of the employees of Acme had, for whatever reason, decided that they wanted 810.

Becks Engraving stands for the proposition that would not be enough in a multi-employer bargaining unit. That unit is the overall unit involving all the employees of all the employers involved in the Association, and that even if a majority of one employer's employees wished to give us representation by, in this case Local 455, it would be insufficient, the majority of all the employees in the entire unit would have to do that.

But I don't know why we went into that. It is not even here in any event.

Let us go back to the other issue here with regard to the question of the authority of this Association to bargain on behalf of Acme, and I will note that in the May 29th letter, the Association represented that Acme was part of the group, that although there is evidence to the effect that the union asked for further proof at a subsequent meeting, that at the first meeting, the 16th, and none was ever forthcoming with regard to Acme.

It is also true that the union nonetheless continued to bargain with the Association, that the nonetheless continued to bargain with Acme's representative there on the 16th, and the 26th, and never asking them to leave, and they never made it a condition of bargaining that they get these letters from the employers involved.

And that at no time did the union ever state, by virtue of the fact that they didn't get this authorization, that they considered Acme out of the group and that the group was not speaking for Acme.

In fact--

JUDGE GIANNASI: Well, could I make an inference from ocme not giving a letter?

MR. BLYER: Can you make an inference of them not providing a letter?

JUDGE GIANNASI: Yes.

MR. BLYER: I don't think so in these circumstances; an adverse inference to the effect that they were not in the Association?

By the fact that they attended on the 16th and the 26th and participated in the negotiations and at no time stated that they were out or considered themselves out and that the union at no time said that they were out but considered them in, and that their future course of action, at least the union certainly shows that they considered Acme in at all times.

And in the course, the further course of action of Acme, that never was to the effect that they were out.

At least the union was not apprised of it, so under all those circumstances, certainly I think you have to conclude that Acme was in at all times.

Now, with regard to the three defenses raised. I don't think there was any bad faith bargaining on behalf of Local 455.

Essentially what you have here is a practice that has been followed in the past with regard to funds, that was again followed.

The Association, it is uncontradicted, never objected to the fact that the union was taking the positio that they wanted from them what would eventually be obtaine from the Allied.

They got specific to some extent. They said they wanted an increase. They said they wanted four percentin one of the funds, the annuity, but at no time did the Association say, "Well, we won't go on any further unless you get more specific."

They accepted that proposition and as they had in the past.

Further, with regard to the fact of wages, the original proposal of the union stated that the union was seeking a substantial wage increase.

They at a further date, whether you take, and I don't know which testimony you are going to credit in this regard, but either on June 26th or early in July, the Association was apprised of a more specific figure in that stipulation.

When the union asked for a proposal on wages, what they got was a response that they would not get any proposal at this time, that the Association was going to wait until the Allied settlement.

The parties continued in a suspended stage based upon the statements that there could be no further negotiations on the economics until the Allied settlement was reached, and then, in fact, as soon as it was reached, we have a meeting set up and a contract reached shortly thereafter.

The evidence of the two sessions on the 16th and the 26th show good faith bargaining. They show discussions of subjects, they show the keeping of an open mind by Local 455, and they also show, the evidence also shows that the union on a number of occasio submitted proposals, that the first proposals were modified by a second proposal and then again modified by a third, and then finally, the agreement that was reached was even a further modification of the original proposal.

So I don't think there is any bad faith bargaining, and I further suggest that even if there was, that it would not excuse any unilateral withdrawal by Acme from the Association, that there is no law on that, that it would be injurious to multi-employer bargaining and the stability of multi-employer bargaining.

No charges were ever filed with regard to unfair labor practices, no claims were made across the table that there was bad faith bargaining.

Also, I would note that there is no evidence that even if there was bad faith bargaining that that was the reason that led to Acme's withdrawal; not a factor.

Now, I would also note with regard to the two other defenses, or justifications for the withdrawal from group bargaining, I don't think that the hiatus was material and would have any affect on the rights of the parties to withdraw. Negotiations had commenced.

It seems that both parties were content to let things lie until the Allied settlement was agreed upon

The employer, it is uncontradicted, never asked for any further negotiations as of 6/26. The union made the next response on the 15th, and Mr. Matienzo asked for a further meeting, brought a stipulation, and there was none forthcoming, and there were no further meetings until the union again raised it on about January 12th or so.

So I don't think that that is a good excuse for pulling out unilaterally of the bargaining.

Finally, with regard to the impasse defenses, as a matter of law I disagree with Mr. Israel.

We have countered about this before. I think the Highway Billboards case stands for the proposition that even if you have an impasse, it is not an unusual circumstanceto justify withdrawal from multi-employer bargaining once it is begun, and without the consent of the union.

I have read it over--he has read his cases over--and we still disagree. But I will stick to that proposition and I will further say that there is no evidence that there was an impasse at the time of withdrawal.

That is basically it at this time.

I could address myself to other issues.

One other thing. With regard to the strikers, they were entitled to the offer of reinstatement based upon the fact that they were unfair labor practice strikers, in my opinion, as of January, 1976, in view of the fact that we had a very serious unfair labor practice.

The signing with 810, the pulling out of the Association, the refusal to honor the Association contract, all of those events certainly prolonged the strike because the strike was first caused by failure to reach contract, and all three of those incidents certainly made it more difficult, if not impossible, to have a contract.

JUDGE GIANNASI: When was it turned into an unfair labor practice strike?

MR. BLYER: I would say January 26th, when you have 810 signing a contract with Acme.

At that time that strike, because of that strike, namely, the failure to reach an agreement, that reason for the strike -- let me withdraw that.

It happened at that point, and what happened at that point is that a strike which was begun because the contract could not be reached was necessarily prolonged because now you had this employer signing up with another union.

Certainly by January--

JUDGE GIANNASI: When was that contract signed?

MR. BLYER: January 1st of '76.

Shortly thereafter, you get--I don't know when it occurs, I am not too sure at this time, but in mid-January we know that Acme finally tells everyone they are pulling out.

Now, that certainly made signing a contract more difficult--reaching a contract--than when they refused--when we find the refusal to honor the Association agreement, we have even more reason for perpetuation of a strike.

JUDGE GIANNASI: What about Mr. Israel's position that two of the employees were back at work?

MR. BLYER: Well, if the evidence indicates that, we don't know at what time they were back for sure. We just know that as of March, late March, on behalf of the striking employees, the four involved, the union made an unconditional offer to return to work.

It is General Counsel's position at that time that they were unfair labor practice strikers and entitled to reinstatement.

Now, if there were no jobs available, fine. Then, of course --

JUDGE GIANNASI: Or if they had been employed sometime earlier.

MR. BLYER: Oh, yes, if they had been employed--well, I don't know if we know that for certain. I don't know if we know when exactly they were employed.

JUDGE GIANNASI: We will see what Mr. Israel's position is.

MR. BLYER: All right.

With regard to Paradise and Hammel, there is no evidence that they were ever employed. We knew that Mr. Hammel was ill, very seriously ill, but this was sometime before the offer of reinstatement -- excuse me -- before the time that the unconditional offer to return to work was made.

We know that Paradise was available and yet he was never offered reinstatement.

All I am saying is that they were entitled to have the offers of reinstatement and they weren't forthcoming and that an issue of back pay is something else.

But I am saying that the failure to offer these men their jobs, the failure to offer these men their jobs, was indication of the employer's desire to be rid of 455, and that these were 455 members and that is why they were not offered the jobs.

Certainly no evidence that they were replaced economically, apparently before they became unfair labor practice strikers.

There is evidence that the business was an ongoing operation, that it was open.

I think the burden--

JUDGE GIANNASI: So your position is if

there is, might not be any back pay, but that is for compliance?

MR. BLYER: I think the burden of General Counsel is met when General Counsel shows that the employees were entitled to the jobs and made a proper offer to return to work, which, I think, we have shown.

Thank you, Your Honor.

JUDGE GIANNASI: All right.

Mr. Israel?

MR. ISRAEL: Your Honor, I would like to supplement my opening remarks.

I indicated in the opening that I believe there were three situations which would justify what might otherwise be considered untimely withdrawal.

I mentioned impasse and unusual circumstance as being situations which are sanctioned by the Board and the argument that the union engaged in surface bargaining only is a possible circumstance which might justify withdrawal.

I know of no case on that point neither for nor against that at this point.

Now, I believe what the evidence has developed is as follows:

I just might interject, I believe in terms of unusual circumstance and impasse, as those terms have been used in Board cases, there has never been any precision or clarity of thought.

Sometimes I think they are used interchangeably. I have seen impasse used, as an example, used for an unusual circumstance, and I have seen them used independently of each other.

But in the case that you have heard today, it seems to me that, at best, there was surface bargaining on the part of the union, at the very best.

You had two bargaining sessions before the strike, and I am using the word "bargaining" very loosely.

At the point of the strike, the union had not indicated to the Association what its demands were, in any economic area, of substance.

It asked for an increase in contributions to the vacation fund, and rather than specify what the increase was, left a blank space in its proposals.

With respect to wages, it wanted a substantial increase, which is a term of no particular meaning at all.

With respect to contributions to the fund, and you are not dealing with one or a few funds, but here you are dealing with six funds, a major item of economics of settlement. All the union would state was it wanted an increase.

So that at a point that the strike commenced, I submit that there weren't even demands on the table from the union.

Now, Mr. Blyer said to you that the employer did not object. I view the testimony as being the employer stated, A, it wanted Mr. Colavito because it felt nothing was going to be accomplished through Mr. Matienzo.

B, the Association represented to Mr. Matienzo that it was not accepting its position as the tail, so to speak, was not willing once again to follow the Allied settlement and that, in fact, it was told or given to the Association in writing.

You must follow either the Allied or the industry because there is not going to be a negotiation. You can break this up in two segments, pre-July 1, that is, prestrike, there are no demands on the table, but there is a strike.

Post-July 1 you get to stipulate what Mr. Matienzo testified to, and the stipulation is the first indication that the union is prepared to discuss in some form with the Association what it is looking for.

Now, in terms of wages, it says it wants ten percent. That is the demand, that is a number in terms of a one-year settlement.

In terms of the various funds, the union says you must take what is negotiated in the Allied and Standard Independent contracts, whatever that means.

I know one thing it doesn't mean. It doesn't mean that the union is going to negotiate with this Association concerning this Association's contributions to six funds.

It says that you, Association, must take what we negotiate somewhere else, whether it is with the Independents or with the Allied.

Once again, that is only for one year, only for oneyear, because Section 33 of the stipulation says if a longer term contract is negotiated in the industry, then the parties shall adopt and accept the changes made for the period after the first year, as outlined above.

Now, once again, I don't know what the industry is. It has been used interchangeably here today. Perhaps it means the Allied. Whether it means the Allied or some unspecified--

JUDGE GIANNASI: Mr. Israel, I have problems with your surface bargaining argument in this respect.

No charges were filed. More than six months has passed since those negotiations.

I mean, more than a year would have passed since these events. If you filed the charge today, it would be time barred and there is case law that indicates that the Board will not accept this evidence as a defense where it would have been time barred.

I have a lot of difficulties, notwithstanding as to the equities in the situation of revising and relitigating, really, the good and bad faith of the union at this time.

I know we have had some testimony that you can fashion an argument on and you are certainly free to do so, but I have some difficulty with that precise intention of yours.

MR. ISRAEL: Well, I would submit that with respect to the area of withdrawal from a multi-unit there is a problem.

JUDGE GIANNASI: That may be a circumstance to the extent that you are relying on a whole set of circumstances and you are free to fashion an argument.

I just say that I have difficulty with that.

MR. ISRAEL: Now, if in fact you accept the argument that there was not surface bargaining, that there was not wise bargaining, maybe hard bargaining but nevertheless bargaining, it seems to me you must come to the conclusion that in fact an impasse was reached, absolute impasse was reached.

Six and a half months, no sessions, no progress, and if it is not an impasse, certainly it is an unusual circumstance, and I don't submit that merely having a six and a half month strike is an unusual circumstance.

I submit having a six and a half month strike in which there are no sessions between the period of a strike, and the last session or two before you have a settlement, where the union in fact manifests an intention not to bargain on specific subjects with the employers of the Association, but rather indicates very clearly in writing that its sole terms and settlement will be in fact a stipulation which ties this Association to other unrelated employers, I say that is a most unusual circumstance and that to tie an individual employer into that situation where he has no way of getting out, not way of getting out, would be a misapplication of the law.

So that either on the theory of the impasse or unusual circumstance, which I can say they are somewhat related and not clearly defined, or what I think is perhaps a new area of law, that surface bargaining, this withdrawal area, perhaps combined with other factors, such as unusual circumstances, this employer, individual employer, could withdraw at a time from the Association where otherwise he could not.

JUDGE GIANNASI: Is it quite clear that your employer here withdrew from the Association in January of 1976?

MR. ISRAEL: No. We submit he withdrew in July. We submit he withdrew from the Association in July.

JUDGE GIANNASI: Can an employer withdraw from a multi-employer situation simply by giving notice to the multi-employer association, if the evidence is susceptible of that finding, or must it also give notice to the union?

MR. ISRAEL: Well, I don't know. I haven't --well, I don't know the answer, quite frankly.

I would think it would have been incumbent upon the Association at that point in time because it is the Association which was bargaining with the union to have notified, and the Association did not in this case.

JUDGE GIANNASI: But is it true?

MR. ISRAEL: Well, that is the point. I say I don't know the answer to that question.

JUDGE GIANNASI: You might address yourself to that in your brief.

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MR. ISRAEL: I certainly will.

Lastly, the question of crediting the testimony of whether it was the January 19th notification, or whether January 16th receipt of a letter, or January 13th notification with a January 12th receipt of a letter, is obviously something that you must credit.

The written document, as opposed to the testimony.

JUDGE GIANNASI: I want to ask you all of that. How significant is it? I know it is terribly confusing at this point.

MR. ISRAEL: Well, it is not significant if the proposition is accepted that the employer resigned from the Association in July and it was incumbent upon the Association to notify the union. That is a proposition.

I think it is otherwise significant only perhaps to negate a proposition that the employer withdrew during the course of a negotiation, two negotiating sessions, when it has become apparent that the parties were close to settlement.

Mr. Blyer asked that question of Mr. Bardy, wasn't it clear on the 13th you were just about ready to settle, and I think the inference he would like to have drawn was that on the 13th the parties knew the settlement was forthcoming, and that is when Acme got out, if it in fact resigned on the 12th or gave the letter on the 12th and notice on the 13th, prior to the time that the negotiations were resumed and prior to the time he could have known where the negotiations were going.

JUDGE GIANNASI: But the Allied settlement took place somewhere along that time, so whether it was the 12th or the 13th or the 16th, the withdrawal would have taken place after the Allied.

And let me ask General Counsel, is it significant to your case as to whether it took place on the 13th or the 16th? You are not necessarily bound as to what you say here.

MR. BLYER: That is fair, then.

JUDGE GIANNASI: The way I see the case and I would like to see your theory.

MR. BLYER: That is a very fair statement and --

JUDGE GIANNASI: Your case might be stronger if it was the 16th.

MR. BLYER: Well, there is also credibility, perhaps, involved and other things, but I think for the heart of the problem, the main issue is did this employer withdraw prior to the commencement of negotiations? If it did, it could do it on its own without the consent of the union. If it did not, and it withdrew after negotiations began, it needed the consent of the union, which it never did get, undisputed.

So when it comes down to if you should find that negotiations began, and I think the evidence shows on June 16th, and then there were further negotiations on June 26th, I think it would be immaterial whether you found that Acme resigned either before the 13th or after the 13th.

JUDGE GIANNASI: Would then your argument be, of course, consisten, if the withdrawal were in July or September or before the Allied contract, that it would still be untimely?

MR. BLYER: Right.

I don't know of any evidence that shows that they withdrew before that letter.

JUDGE GIANNASI: Right. So there is some testimony, but I don't know that it is really solid on withdrawal.

I will have to defer until I take a look at it.

MR. BLYER: The union was never advised. That is the part you asked before.

JUDGE GIANNASI: Yes.

All right, Mr. Israel, do you have more?

MR. ISRAEL: No, I have nothing further.

JUDGE GIANNASI: I would like briefs in this case. It is a short case, even if it is a tangled area of law.

But you all have identified the cases and seem to be pretty conversant with it, so I don't think that a brief would be too difficult to have from both of you.

Now, when do you want to submit briefs?

MR. ISRAEL: Off the record.

(Discussion off the record.)

JUDGE GIANNASI: On the record.

Briefs are due thirty days from today, which would be, I will say, October 7th.

Is there anything further?

MR. BLYER: No.

MR. ISRAEL: No.

JUDGE GIANNASI: There being nothing further, this hearing is now closed at 6:12 P. M.

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JD--5--77
Brooklyn, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

ACME WIRE WORKS, INC.

Case 29--CA--4866

and

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON
WORKERS AFL--CIO

and

LOCAL 810, STEEL, METALS, ALLOYS
AND HARDWARE FABRICATORS AND
WAREHOUSEMEN, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Party to the Contract

Alvin Blyer, Esq., of Brooklyn, N.Y., for the General Counsel.

Ms. Vicki Ehren Ehren-Stein, Esq. (Weinstock, Harper, Dorn & Leibowitz, Esqs.), of New York, N.Y., for the Charging Party.

Stan Israel, Esq. (Bluestone, Klugman & Israel, Esqs.), of New York, N.Y., for the Respondent.

Jeffrey L. Kreisberg, Esq. (Kirkin, Barre, Saltzstein & Gordon, P. C.), of New York, N.Y., for the Party to the Contract.

DECISION

Statement of the Case

ROBERT A. GIANNASI, Administrative Law Judge: This case was heard before me on September 7, 1976, in Brooklyn, New York, upon a complaint which issued on April 20, 1976, alleging that Respondent violated Section 8(a)(5) and (1) of the Act by its untimely withdrawal from multiemployer bargaining and thereafter refusing to abide by the agreement reached by its bargaining agent, Wire Works Manufacturers Association, and the Union;1/ Section 8(a)(3), (2), and (1) of the Act by recognizing and entering into a collective-bargaining agreement with Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter Local 810), which agreement requires membership in Local 810 as a condition of employment, notwithstanding that Local 810 did not represent a majority of employees in the appropriate multiemployer bargaining unit; and Section 8(a)(3) and (1) by failing and refusing to reinstate striking employees upon their unconditional offer to return to work after a strike against Respondent. The Respondent denied the critical allegations in the complaint, and Respondent and the General Counsel filed briefs.

Upon the entire record, including my observation of the witnesses and their demeanor, I make the following:

Findings of Fact

I. Jurisdictional Findings

Respondent is a corporation organized under the laws of the State of New York and at all times material has maintained its principal office and place of business in the Borough of Brooklyn, city and State of New York, where it is engaged in the manufacture, sale, and distribution of various metal and wire products.

Wire Works Manufacturing Association, Inc., herein called the Association, is a membership corporation organized under the laws of the State of New York and at all times material has engaged in the function of negotiating and executing bargaining agreements with labor organizations and in administering said agreements on behalf of its members located and operating in the city and State of New York. During the past year, prior to the issuance of the complaint, the employer-members of the Association, collectively, in the course and conduct of their business operations, purchased and caused to be transported and delivered to their various New York State locations, wire, metal, and other goods and materials valued in excess of $50,000. Such materials were transported and delivered to said plants in interstate commerce directly from other States of the United States. Accordingly, I find that the Association, and each of its employer-members, including Respondent, are, and have been at all material times herein, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL—CIO, and Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

1/ Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL—CIO.

II. The Alleged Unfair Labor Practices

A. The Facts

For many years the Union has represented the production and maintenance employees of the employer-members of the Association and has negotiated collective-bargaining agreements with the Association. The most recent contract with the Association expired on June 30, 1975. Also on that date the Union's contracts with two other associations of employers, Allied Building Metal Industries, Inc. (Allied), and the Independent Association of Steel Fabricators, Inc., as well as a group of about 60 independent companies with whom the Union bargained separately, expired.

In April 1975, the Union notified the Association of its desire to negotiate a new contract to replace the one that was expiring on June 30, 1975. In May 1975, the Union informed the Association by letter that it wished to know who the Association would be representing in the upcoming negotiations. It also told the Association that if it had any new members the Union would "need confirmation from them that your association is authorized to represent them." In response to the Union's letter, the Association forwarded a list of the employer-members of the Association that it would be representing in the upcoming negotiations. Included in that list was Respondent, which has been a member of the Association since at least 1964.

The first negotiating session between the Union and the Association was held on June 16, 1975. By that first meeting or by the next one, which was held on June 24 or 26, 1975, the Association had the Union's proposals for a new contract. There was little discussion of these proposals at either of the first two bargaining sessions. The proposals sought in very general terms increases in wages and contributions to fringe benefit funds covering the employees.

The first two bargaining sessions were primarily concerned with a discussion of the industry in general. The employer-members of the Association pleaded that their economic situation was bad. More specifically, at the second June bargaining session, there was discussion on the subject of providing better schooling for wire workers. Also discussed at some length was the Association's desire to reduce certain vacation benefits. The Association also raised the issue of whether the Union would permit the employer-members of the Association to purchase certain prefabricated panels. In addition, at this second negotiating session, the Union asked the Association to make a wage proposal. The Association stated it had no wage proposal to make at that time, and that there was no sense in making any economic offer until the Union completed negotiations with the Allied employers. Association representatives also stated that most of their employer-members would be closed for the first 2 weeks in July. It was agreed that Union Representative William Matienzo would contact Association representatives towards the middle of July.

Respondent's representative, J. P. Batthaney, was present at both of the June 1975 negotiating sessions. He participated in the discussions that occurred at both of these meetings. Neither the Respondent nor the Association suggested that Respondent was not participating [illegible] member of the Association.

By letter dated June 19, 1975, the Association informed the Union that its proposals for a new contract were unacceptable. The Association proposed that the expiring contract be extended for another 3 years. At the second June bargaining session this request for a continuation of the expiring contract for another 3 years was repeated by the Association. The proposal was rejected by the Union.

On July 1, 1975, the Union commenced a strike against those employers who had not signed a new contract with it, including the eight employer-members of the Association. On or about July 15, 1975, Union Representative Matienzo called Joseph Bardy of the Association and informed Bardy that the Union had new proposals for a contract. Matienzo delivered the new proposals to Association representatives. In a letter dated July 23, 1975, the Association acknowledged the new proposals for a contract and rejected them, stating its hope that the union position "will become more receptive." The letter ended by requesting that the Union let it "know of any changes."

Sometime in August, while on the picket line, Matienzo spoke with Association President Kennedy and Bardy and was again told by them that the Association would not sign the Union's latest proposal and that they were waiting for the Allied group to settle with the Union before further negotiations. The Association and the Union had followed this same course of conduct, i.e., suspending final negotiations until Allied reached a new contract, for over 20 years. Historically, the Allied negotiations have established the pattern for settlements in the industry for the other employers in the industry who were not members of Allied.

From June 24, 1975, through mid-January 1976, there were no face-to-face bargaining sessions between the Union and the Association. During that period of time, the Allied negotiations continued and neither the Association nor the Union asked for bargaining meetings.

In late December 1975 or early January 1976, Respondent recognized Local 810 as the representative of all of Respondent's employees. It entered into a collective-bargaining agreement with Local 810 dated January 1, 1976, covering these employees. The bargaining agreement also requires that, as a condition of employment, all of Respondent's employees become and remain members of Local 810.

The next negotiating session between the Union and the Association occurred on January 13, 1976, about 1 week after Allied had reached an agreement with the Union. At this session, the Union further modified its two earlier sets of proposals. Discussion ensued on the subject of the purchasing of certain types of prefabricated panels and other issues. The Association indicated a willingness to agree to the same wage and economic provisions agreed to by Allied.

At this January 13 meeting, Respondent had no representative in attendance. Union President Colavito inquired of Kennedy and Bardy as to the whereabouts of Respondent's representative. Kennedy stated that he had heard that Respondent "was finished with us." Colavito asked where he heard that from but all Kennedy would say was that he had heard it. Colavito then asked Kennedy to let him know positively what the Respondent's position was and Kennedy agreed he would let him know at the next meeting.

The next bargaining session was held on January 19, 1976. Respondent did not attend. After discussion on various topics, agreement was reached on a new contract and it was executed by the Union and the Association. During the course of this meeting, Colavito again inquired about Respondent. Colavito was informed by Bardy that the Association had just received a letter that day from Respondent informing it that Respondent had resigned from the Association. Colavito asked Bardy to indicate on the letter that he had just received it and he did so. He wrote that he received the letter of resignation, which was dated August 11, 1975, on January 16, 1976.[2]

It is uncontroverted that at no time prior to the January 1976 meetings was the Union told or made aware of any desire or decision of Respondent to withdraw from bargaining through the Association.

On January 20, 1976, Union Representative Matienzo spoke to Respondent's representative, Batthaney, and told him that the Union had reached an agreement with the Association and that he wanted Respondent to honor it and to send his men back to work. Batthaney told Matienzo that Respondent had resigned from the Association and that he had nothing to do with the Union anymore. In late March 1976, the Union sent a copy of the agreement that had been reached between it and the Association to Respondent and noted again that it considered Respondent to be bound by it.

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[2] The above is based on the credited and mutually corroborative testimony of Colavito and Matienzo. The only other witness in this proceeding was Bardy, whose testimony I discredit to the extent it is inconsistent with the findings set forth above. Bardy's testimony is that Respondent mentioned possible withdrawal from the Association in July 1975. There was no evidence, however, that this was a firm resignation or that it was communicated to the Union. Bardy also testified he believes he handed the resignation letter to Union representatives on January 13 and received it from Respondent's representative the day before. Bardy conceded, however, that he wrote that he had received the letter on January 16 on a copy of the letter received into evidence in this case. Although he testified that he was mistaken when he affixed the January 16 date on the letter, I find his testimony incredible. This is not only because I give greater weight to the notation made contemporaneously with the relevant events herein and to the testimony of Colavito and Matienzo, but also because Bardy's testimony was confusing and imprecise and his demeanor convinced me that he was deliberately attempting to show that Respondent had not given an untimely withdrawal from the Association. Accordingly, I am unable to credit Bardy's testimony on this or any other crucial issue in this case.

The Union's strike against the employer-members of the Association, except for Respondent, ended after the agreement was reached with the Association.

On March 29, 1976, the Union also sent a letter to Respondent unconditionally requesting on behalf of Respondent's employees that they be returned to work. At this time, Respondent employed four employees. Respondent never responded to that request.

B. Discussion and Analysis

Multiemployer bargaining is a consensual arrangement. Under Board law, employers and unions may withdraw from multiemployer bargaining only under certain conditions. Prior to the beginning of negotiations, withdrawal can only be effected by an unequivocal written notice expressing a sincere intent to permanently abandon the multiemployer unit and to pursue negotiations on an individual employer basis. Once negotiations begin, however, withdrawal can only be effected on the basis of mutual consent or "unusual circumstances."3/

In the instant case, General Counsel urges that Respondent's withdrawal, allegedly discussed in July 1975 but not formalized or transmitted to the Union until January 19, 1976, was untimely. Respondent does not seriously dispute that the withdrawal, whenever it occurred, was untimely, insofar as it occurred after negotiations began on a new contract. It urges, however, that it was entitled to withdraw from multiemployer bargaining because of the following "unusual circumstances": (1) an impasse occurred sometime after the June 1975 meetings of the parties; (2) the Union had engaged in unlawful surface bargaining; and (3) a combination of factors existed amounting to "dire economic circumstances" within the meaning of *Hi-Way Billboards, Inc.*, 206 NLRB 22 (1973), enforcement denied on other grounds 500 F.2d 181 (C.A. 5, 1974). I find that Respondent's withdrawal was untimely and that the record herein does not show unusual circumstances which would permit such untimely withdrawal. Furthermore, I find that Respondent violated the Act by coupling its withdrawal from the Association, whose members were obligated to bargain with the Union as the exclusive representative of its employees, with recognition of Local 810, another labor organization which did not represent a majority or, so far as the record shows, any of its employees. I further find that the strike of Respondent's employees---after the attempted withdrawal and unlawful recognition of Local 810---was converted into an unfair labor practice strike and Respondent's refusal to offer three strikers their jobs back upon their unconditional request to return to work was unlawful.

1. Negotiations had commenced and withdrawal was untimely

In the instant case, bargaining---at least opening negotiations---began in June 1975. The Union submitted its proposals and the Association called for extension of the existing agreement. The Association also made proposals on vacation, subcontracting, and training programs. On July 15, the Union submitted

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3/ *City Roofing Co.*, 222 NLRB No. 119 (1976); *Bill Cook Buick, Inc.*, 224 NLRB No. 154 (1976); *Retail Associates, Inc.*, 120 NLRB 388 (1958).

modified proposals which were rejected. Thereafter, according to the credited testimony, the parties mutually agreed to suspend bargaining until the Union had reached agreement with the Allied employer group, whose negotiations were in progress. This had been the traditional course of bargaining in the industry. Thus, it is clear that, at this point, negotiations had commenced and withdrawal without the consent of the Union would have been untimely.[4]

As I have found above, neither the Respondent nor the Association informed the Union of Respondent's decision to withdraw from the Association until the final negotiating session on January 19, 1976. This was clearly untimely, as the Allied agreement had been concluded and the Respondent, again without notifying the Union, had concluded an agreement with another labor organization. Accordingly, in the absence of "unusual circumstances," Respondent violated Section 8(a)(5) and (1) of the Act by its untimely withdrawal from the multiemployer unit after bargaining had commenced.

2. Respondent's claim of unusual circumstances

In view of the circumstances of the withdrawal, none of the reasons now offered by Respondent provide a defense to its conduct. It is axiomatic that the decision to withdraw from multiemployer bargaining must be made in good faith with the utilization of a different course of bargaining on an individual basis.[5] Respondent's decision did not satisfy these prerequisites. First of all, none of the asserted reasons were advanced at the time of the withdrawal in January 1976, a factor which the Board views as undercutting an asserted defense to untimely withdrawal.[6] The rationale for this view is sound since it is unlikely that a circumstance allegedly justifying untimely withdrawal from a multiemployer unit is truly "unusual" if it is not asserted at the time but rather awaits the onset of litigation. Indeed, in this case, no reason was given for the withdrawal when Respondent's resignation was transmitted to the Union. From all that appears, the reason for the withdrawal was that Respondent was dissatisfied with the contract concluded with Allied which it knew would be significant in the final contract concluded with the Association. Respondent waited, however, to withdraw until after negotiations were almost completed and after the Allied contract was concluded. Moreover, here Respondent sought to withdraw from multiemployer bargaining in the context of unlawful recognition of another union as the representative of its employees with no attempt to bargain with the Union on an employerwide basis. There is no evidence that the contract with Local 810 was entered into after ascertainment of the desires of a majority of Respondent's employees. Nor did

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[4] See The Carvel Company, and C and D Plumbing and Heating Company, 226 NLRB No. 18 (1976).

[5] See Retail Associates, Inc., 120 NLRB at 394.

[6] Tulsa Sheet Metal Works, Inc., 149 NLRB 1487, 1488 (1964), enfd. 367 F.2d 55, 58 (C.A. 10, 1966); see also N.L.R.B. v. Central Plumbing Company, 492 F.2d 1252, 1254, fn. 3 (C.A. 6, 1974).

Respondent make any attempt to bargain with the Union on an individual basis, even though it is fair to presume that the Union's representative status in the single-employer unit continued. See Tahoe Nugget, Inc., 227 NLRB No. 72 (1976). 7/

Respondent's asserted reasons for its withdrawal are insufficient to constitute "unusual circumstances" warranting untimely withdrawal. First of all, the evidence herein does not support Respondent's contention that there was an impasse.8/ Although there was a hiatus of several months in bargaining between the first sessions and the last ones, there was no single overriding issue which divided the parties and made it unlikely that there would be agreement in the foreseeable future. It appears that both parties were satisified with the decision to wait for conclusion of the Allied bargaining, which had been traditional. Moreover, as indicated below, the Allied negotiations continued during this period and their successful conclusion led, in some measure, to the agreement of January 19, 1976. Until the litigation of this case there had been no suggestion by the Association or its members that there was an impasse in negotiations. In any event, Board law is quite clear that impasse alone is no excuse for untimely withdrawal from the multiemployer bargaining obligation. Bill Cook Buick, Inc., 224 NLRB No. 154.

Respondent also urges that it was privileged to withdraw from the Association because the Union had engaged in a complete failure to bargain in good faith. Assuming arguendo that this might be a factor that would excuse an untimely withdrawal in certain factual circumstances, Respondent's contention is not well founded in the circumstances of this case. I cannot conclude from the evidence discussed above that the Union bargained improperly or unlawfully with respect to the Association. The Union's original proposals were general in nature, but contemplated increased benefits. In July, after the Association failed to make an economic offer, the Union asked for a 10-percent wage increase. Thereafter, there was mutual agreement to await the Allied negotiations which continued during this period and resulted in an agreement which led to the Association agreement. By virtue of the entire bargaining---including the waiting period while the Allied negotiations were going forward---the Association was able to obtain the Union's agreement on one of the important issues it raised early in the negotiations, the subcontracting of panels. Thus, neither the hiatus in bargaining nor the Union's

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7/ Respondent only had four employees and they all engaged in the strike; there is no evidence that any did not wish the Union to represent them.

8/ An impasse was defined as follows in Taft Broadcasting Co., WDAF AM--FM TV, 163 NLRB 475, 478 (1967):

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

lack of specificity, relied upon by Respondent, shows lack of good-faith bargaining on the part of the Union. Moreover, neither the Association nor the Respondent filed charges with the Board alleging that the Union had engaged in surface bargaining. This casts further doubt on Respondent's assertion that the Union was bargaining in bad faith and rather confirms that the Association was content to wait for the conclusion of the Allied bargaining. In these circumstances, it is inappropriate to give weight to defenses which in effect attempt to escape obligations under the Act by dredging up alleged unfair labor practices concerning which charges were not timely filed.9/

Finally, Respondent's allegations of dire economic circumstances are unavailing. The evidence it cites involved the opening bargaining salvos of Association representatives when they first met with union representatives. The picture of a depressed industry presented by Respondent was as applicable to the other Association members as to Respondent. Yet they continued in the multiemployer unit. Respondent submitted no evidence of its own impending economic doom nor any economic evidence whatsoever. Nor is the fact of a strike sufficient reason for untimely withdrawal.10/

3. Respondent's recognition of Local 810

As stated above, the Respondent has not shown sufficient reason to excuse its untimely withdrawal from the Association. Thus, it was obligated to honor the agreement reached by its agent, the Association, and the Union, and its refusal to do so violated Section 8(a)(5) and (1) of the Act. Furthermore, Respondent entered into a collective-bargaining agreement with Local 810 which carried an effective date of January 1, 1976. Since its bargaining obligation was defined by the Union's majority status in the multiemployer Association, Respondent's recognition of Local 810 and negotiation of a collective-bargaining agreement with Local 810 violated Section 8(a)(2) and (1) of the Act.11/ Since the Local 810 agreement contained a union-security provision requiring membership in Local 810, the Respondent's conduct also violated Section 8(a)(3) and (1) of the Act.12/

9/ See International Hod Carriers' Building & Common Laborers' Union of America, Road & Heavy Construction, Local 1298, AFL--CIO (Roman Stone Construction Company), 153 NLRB 659, fn. 3 (1965); North Bros. Ford, Inc., 220 NLRB No. 154 (1975); see also N.L.R.B. v. Crimptex, Inc., 517 F.2d 501, 505 (C.A. 1, 1975).

10/ Beck Engraving Co., Inc., 213 NLRB 53, 54--55 (1974), enforcement denied on other grounds 522 F.2d 475 (C.A. 3, 1975).

11/ International Ladies' Garment Workers Union AFL--CIO [Bernhard-Altmann Texas Corp.] v. N.L.R.B., 366 U.S. 731, 737--739 (1961). The obligation to bargain with an incumbent union exacts the "negative duty to treat with no other." Medo Photo Supply Corporation v. N.L.R.B., 321 U.S. 678, 684 (1944).

12/ Local Lodge No. 1424, International Association of Machinists, AFL--CIO [Bryan Manufacturing Co.] v. N.L.R.B., 362 U.S. 411, 412--414 (1960).

4. Reinstatement of strikers

I also find and conclude that, after Respondent's unfair labor practices described above, the economic strike of employees was prolonged by Respondent's unlawful conduct and converted into an unfair labor practice strike at least with respect to the employees of Respondent who remained on strike after the Union came to terms with the Association.13/ These employees were entitled to immediate reinstatement upon their unconditional offer to return to work, which was made on their behalf by the Union on March 29, 1976.14/ General Counsel concedes that one employee, Dougherty, returned to work before the Union's offer on behalf of all striking employees. There is no evidence that the three other employees were immediately reinstated to their former jobs and the Respondent did not show that it made offers of reinstatement to them. Indeed, in response to Union Representative Matienzo's request that Respondent honor the Association agreement and let his men come back to work, Batthaney replied that he had nothing to do with the Union. Accordingly, the Respondent's failure to reinstate employees Diaz, Hammel, and Paradise was violative of Section 8(a)(3) and (1) of the Act.15/

Respondent contends that the Union's offer was inoperative because it was simply a pro forma statement without knowledge of the circumstances of the particular employees involved. There is evidence that employee Hammel was unable to work because he was ill and that the whereabouts of employee Paradise at the time of the hearing were unknown. Although the evidence is sketchy on this point, I am convinced that Union Representative Matienzo had sufficient knowledge of the desires of the employees to return to work so that the Union's offer on their behalf was a legitimate one in the circumstances of this case. The letter itself makes the offer unconditional. There is evidence that Matienzo spoke to Paradise, who said that he had talked to an official of Respondent about returning to work but was not going back unless "Local 455 is back there"; that he had also spoken to Hammel in February or March 1976; and that he had heard about Diaz returning to work. Moreover, Batthaney had indicated in a conversation with Matienzo that Respondent had nothing to do with the Union. Any further questions concerning the availability of Paradise or Hammel for work and the backpay amounts, if any, due all employees, including Diaz, may be resolved in the compliance phase of this proceeding.

13/ Tulsa Sheet Metal Works, Inc., 149 NLRB at 1503; Palomar Corporation, 192 NLRB 592, 598 (1971), enfd. 465 F.2d 731 (C.A. 5, 1972).

14/ See Southwestern Pipe, Inc., 179 NLRB 364 (1969), enforcement denied 444 F.2d 340 (C.A. 5, 1971); Certified Casting & Engineering, Inc., 145 NLRB 572, 573 (1963).

15/ There is testimony that Union Representative Matienzo heard that Diaz had returned to work, but I consider this evidence insufficient upon which to base a finding, particularly since the date and the circumstances of Diaz' return were unspecified.

Conclusions of Law

1. All production and maintenance employees, including plant clericals employed by the employer-members of the Wire Works Manufacturers Association, Inc., exclusive of all clerical employees, superintendents, guards, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for bargaining within the meaning of Section 9(b) of the Act.

2. The Union is, and at all material times has been, the exclusive bargaining representative of the employees, including those of Respondent, in the aforesaid appropriate unit.

3. At all times material, Wire Works Manufacturers Association, Inc., has been the authorized negotiating agent of the Respondent authorized to negotiate collective-bargaining agreements on behalf of the Respondent within the meaning of Section 2(13) of the Act.

4. By refusing on and after January 19, 1976, to sign the agreement reached between the Union and the aforesaid Association on that date, the Respondent has engaged in a refusal to bargain, an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

5. By entering into and maintaining a collective-bargaining agreement with Local 810, which agreement contained a provision requiring employees to become members of Local 810, at a time when Respondent was obligated to bargain with the Union as the exclusive representative of its employees, Respondent violated Section 8(a)(3), (2), and (1) of the Act.

6. The strike and refusal to work of Respondent's employees, Manuel Diaz, Martin Hammel, and Frank Paradise, was prolonged after January 19, 1976, by Respondent's unfair labor practices and the strike, which was originally an economic strike, was thus converted into an unfair labor practice strike.[16]

7. By refusing and failing, after March 29, 1976, to reinstate its above-name employees upon their unconditional offer to return to work, Respondent discriminate against them in violation of Section 8(a)(3) and (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

I shall recommend that Respondent cease and desist from the unfair labor practices found and take certain affirmative action which I deem necessary to effectuate the purposes of the Act.

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[16] There is no evidence that the Union or the employees knew before January 19 that Respondent had signed a contract with Local 810 effective January 1, 1976.

Since it has been found that Respondent refused to bargain with the Union by refusing to execute and abide by the agreement reached between the Union and the Association, I will recommend that Respondent be ordered to sign and honor said agreement and make whole its employees for any loss of wages or other benefits they may have suffered as a result of Respondent's failure to sign the agreement on or about January 19, 1976. Backpay, if any, shall be computed in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

In addition, since Respondent has been found to have unlawfully entered into a collective-bargaining agreement with another labor organization, Local 810, at a time when it was obligated to bargain with the Union, it shall be ordered to cease and desist from giving effect to said agreement and to reimburse employees the amounts they paid, pursuant to the union-security provisions of that agreement, for union dues or initiation fees, except insofar as employees joined Local 810 prior to the date of said agreement. The amounts of reimbursement, if any, shall carry interest at the rate of 6 percent per annum.

Finally, since Respondent has been found to have unlawfully failed to reinstate unfair labor practice strikers after their unconditional offer to return to work, it shall be ordered to offer them full reinstatement to their former positions or, if those jobs no longer exist, to substantially equivalent jobs, and to make them whole for any losses suffered in accordance with the backpay formula mentioned above.

Upon the foregoing findings of fact and conclusions of law, and the entire record of this case, I hereby issue the following recommended:

ORDER[17]

Respondent, Acme Wire Works, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to sign the contract negotiated by Wire Works Manufacturers Association on behalf of its members and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL—CIO, and agreed upon on January 19, 1976.

(b) Recognizing and bargaining with Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any labor organization or giving effect to its contract with Local 810, dated January 1, 1976, so long as it is obligated to bargain with Shopmen's Local 455 as the exclusive representative of its employees in the above-described appropriate unit.

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[17] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Refusing and failing to reinstate employees who strike to protest unfair labor practices of Respondent upon their unconditional offer to return to work.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Withhold and withdraw all recognition from Local 810 as the exclusive representative of its employees in the unit which is represented by Shopmen's Local 455 and cease giving effect to or applying its agreement with Local 810 dated January 1, 1976.

(b) Reimburse all present and former employees, except those who joined Local 810 prior to the execution of the January 1, 1976, agreement between Respondent and Local 810, for all initiation fees, dues, and other monies, if any, paid by them pursuant to the union-security provisions of said agreement, in the manner provided in the section above entitled "The Remedy."

(c) Forthwith sign and implement the agreement reached on January 19, 1976, between the Association and the Union insofar as it applies to employees of Respondent in the above-described unit.

(d) Upon execution of the foregoing agreement, give retroactive effect to January 19, 1976, or such other effective date as appears in the agreement reached between Respondent and the Union on that date, and make whole its employees for any losses that may have been suffered by Respondent's failure or refusal to sign said agreement.

(e) Offer to employees Manuel Diaz, Martin Hammel, and Frank Paradise immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the Respondent's discrimination against them from March 29, 1976, the date on which the Union made an unconditional offer to return to work on their behalf, until the date of Respondent's unconditional offer of reinstatement to them, together with interest at the rate of 6 percent per annum, in the manner set forth in the section of this Decision entitled "The Remedy."

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its plant in the Borough of Brooklyn, New York, New York, copies of the attached notice marked "Appendix."[18] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[18] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(h) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C.

Robert A. Giannasi
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice.

This Act gives all employees these rights:

To engage in self-organization
To form, join, or help a union
To bargain collectively through a representative of their own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all these things.

WE WILL forthwith sign the contract of January 19, 1976, negotiated by Shopmen's Local 455 and the Wire Works Manufacturers Association.

WE WILL give retroactive effect to the terms and conditions of said contract.

WE WILL NOT recognize Local 810, Teamsters as the representative of employees represented by Shopmen's Local 455, and WE WILL NOT give effect to or apply the January 1, 1976, contract with Local 810.

WE WILL NOT refuse to reinstate employees who have struck to protest our unlawful conduct upon their unconditional offer to return to work.

WE WILL make our employees whole for any losses they may have suffered by our refusal to sign the Wire Works Manufacturers Association agreement or for our failure to immediately reinstate employees who offered to return to work unconditionally after abandoning their strike to protest our unlawful conduct.

WE WILL reimburse any employee for all fees, dues, or other payments to Local 810 which we may have unlawfully deducted from their pay under the union-security provision of our contract with Local 810.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer Manuel Diaz, Martin Hammel, and Frank Paradise immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights or privileges, and WE WILL make them whole for any loss of pay they may have suffered because of our discrimination against them, with interest at 6 percent per annum.

ACME WIRE WORKS, INC.
(Employer)

Dated ____________________ By ____________________
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--330--7709.

JPW

FILE B.B.

D--2398
Brooklyn, N.Y.

229 NLRB No. 57

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ACME WIRE WORKS, INC.

Case 29--CA--4866

and

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON
WORKERS, AFL--CIO

and

LOCAL 810, STEEL, METALS, ALLOYS
AND HARDWARE FABRICATORS AND
WAREHOUSEMEN, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Party to the Contract

DECISION AND ORDER

On January 19, 1977, Administrative Law Judge Robert A. Giannasi issued the attached Decision in this proceeding. Thereafter, Respondent and the Party to the Contract filed exceptions and supporting briefs, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Acme Wire Works, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

Dated, Washington, D.C. April 28, 1977

Howard Jenkins, Jr., Member

John A. Penello, Member

Peter D. Walther, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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[1] Respondent and the Party to the Contract have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

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Shopmen's Local Union No. 455

OF THE

International Association of Bridge, Structural and Ornamental Iron Workers

Office: 853 BROADWAY, NEW YORK, N.Y. 10003

GRamercy 3-2226 - 2227

WILLIAM COLAVITO
PRESIDENT

JOHN ZITO
FINANCIAL SECRETARY-TREASURER

AFFILIATED WITH
AFL - CIO
CENTRAL TRADES BUILDING CONSTRUCTION COUNCIL
OF GREATER NEW YORK
NEW YORK STATE FEDERATION OF LABOR
DISTRICT COUNCIL OF IRON WORKERS

April 8, 1975

Wire Workers Mfg. Ass. of N.Y.
c/o Bellis Wire Works Inc.
307 Scholes Street
Brooklyn, N.Y. 11206

Gentlemen:

This letter will serve as official notification of the desire of Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers to terminate, at the end of the current contract year, its existing collective bargaining agreement with your Company.

We desire that our representatives meet with your representatives for the purpose of negotiating a new collective bargaining agreement to become effective as of the expiration of the current agreement, and we will therefore appreciate your advising us as far in advance as possible as to the date it will be conveniemt for your representatives to meet with our representatives for the purpose of starting such negotiations.

Very truly yours,

William Colavito

William Colavito
President

WC:lh
oeiu 153

IED MAIL

If you have any new

G.C. Ex 5 FORTE in Ev.
9/1/76

May 21, 1975

COPY

Wire Workers Mfg. Assoc.
c/o Bellis Wire Works Inc.
307 Scholes Street
Brooklyn, N.Y.

Dear Sir:

In order to properly proceed in our coming negotiations it is urgent that we have a list of the member firms of your association that you will represent in these negotiations.

If you have any new members we will need confirmation from them that your association is authorized to represent them.

Very truly yours,

John Zito
Fin. Sec'y. Treas.

JZ:lh
oeiu 153

G. C. Ex 6 [illegible] inEV.
[illegible] 9/.,/75

WIRE WORK MANUFACTURERS ASSOCIATION
c/o BELLIS WIRE WORKS, INC.
307 SCHOLES STREET
BROOKLYN, N.Y. 11206

May 29, 1975

International Bridge, Strutural and
Ornamental Iron Workers
Shopmens Local Union No. 455
853 Broadway
New York, N.Y. 10003

Gentlemen:

In response to your inquiry dated May 21, 1975 as to who will be Represented by the Wire Work Manufacturers Association, we are sending the enclosed list.

We have also been told by our Business Agent that a copy of your Unions Proposals for a New Labor Contract will be sent to us within the week of June 2nd, 1975. This should enable us to be ready for a Meeting with Mr. Colavito during the week of June 9th, 1975.

We are sure we can agree on a specific date after we receive the aforementioned Proposals.

We await your communication.

Very truly yours,
WIRE WORK MANUFACTURERS ASSOCIATION

Joseph G Bardy

JOSEPH G. BARDY
JGB:lp
encls.

WIRE WORK MANUFACTURERS ASSOCIATION
c/o BELLIS WIRE WORKS, INC.
307 SCHOLES STREET
BROOKLYN, N.Y. 11206

Business Establishments participating in the Collective Bargaining between the WIRE WORK MANUFACTURERS ASSOCIATION and SHOPMANS LOCAL 455 - as of MAY 29, 1975.

BELLIS WIRE WORKS, INC.
307 SCHOLES STREET
BROOKLYN, N.Y. 11206

ESTEY BROTHERS INC.
1006 METROPOLITAN AVE
BROOKLYN, N.Y. 11206

ACME WIRE WORKS, INC.
366 TENEYCK ST.
BROOKLYN, N.Y. 11206

GENERAL WIRE MESH CORP.
1620 DECATUR STREET
BROOKLYN, N.Y. 11227

CITY WIRE WORKS
158 16TH ST.
BROOKLYN, NEW YORK

ACORN MESH CO. INC.
510 HUNTS POINT AVENUE
BRONX, NEW YORK 10459

STANDARD WIRE MESH CO.
27 MONTROSE AVE.
BROOKLYN, N.Y. 11206

STAR WIRE MESH CO.
518 E. 119TH ST.
NEW YORK, N.Y. 10035

ESTABLISHED 1910

ACME WIRE WORKS, Inc.

366-370 TEN EYCK STREET
BROOKLYN, N. Y. 11206
HYacinth 7-0702

OFFICE RAILINGS
FOLDING GATES
ENCLOSURES
BANK CAGES
PARTITIONS

WICKETS & GRILLES
SKYLIGHT GUARDS
MACHINE GUARDS
WINDOW GUARDS

All agreements contingent upon strikes or other delays beyond our control. Prices subject to change without notice.

G.C. Ex 8 ~~For id~~ by CV.
Rec 9/7/75

266

August 11, 1975

Wire Work Manufacturers Association
c/o Bellis Wire Works, Inc.
307 Scholes Street
Brooklyn, New York 11206

Gentlemen:

We hereby tender our resignation from the Wire Work Manufacturers Association as of this date, August 11, 1975.

Very truly yours,
ACME WIRE WORKS, Inc.

J P Batthany
J. P. Batthany

jpb/e

Rec'd January 16th, 1976
J G Baily
Wire Work Manufacture

MEMBER

G.C. Ex 9 [illegible] 14 E U
9/7/76

267

Iron Workers Local Union No. 455

OF THE

International Association of Bridge, Structural and Ornamental Iron Workers

Office: 853 BROADWAY, NEW YORK, N.Y. 10003

GRamercy 5-2226 - 2227

285

WILLIAM COLAVITO
PRESIDENT

JOHN ZITO
FINANCIAL SECRETARY-TREASURER

AFFILIATED WITH
AFL - CIO
CENTRAL TRADES BUILDING CONSTRUCTION COUNCIL
OF GREATER NEW YORK
NEW YORK STATE FEDERATION OF LABOR
DISTRICT COUNCIL OF IRON WORKERS

March 24, 1976

Acme Wire Works Inc.
334 Wyckoff Avenue
Brooklyn, N.Y.

Gentlemen:

As you are aware your previous contract with Local 455 was a part of a multi-employer group - the Wire Work Manufacturers Association. That Association continued to represent you, together with other of it's employer members in collective bargaining with this Local prior to and after the expiration of the previous agreement.

A contract was signed January 19, 1976 and a copy is enclosed.

If you have any questions, please call.

Very truly yours,

William Colavito

William Colavito,
President

WC:lh
oeiu 153
Enc.

G.C.Ex 11 Fo ~~[illegible]~~ 14EU.
by 8/7.76

GC#11

268

Iron Workers Local Union No. 455

OF THE

International Association of Bridge, Structural and Ornamental Iron Workers

Office: 853 BROADWAY, NEW YORK, N.Y. 10003

GRamercy 5-2226 · 2227

255

WILLIAM COLAVITO
PRESIDENT

JOHN ZITO
FINANCIAL SECRETARY-TREASURER

AFFILIATED WITH
AFL - CIO
CENTRAL TRADES BUILDING CONSTRUCTION COUNCIL
OF GREATER NEW YORK
NEW YORK STATE FEDERATION OF LABOR
DISTRICT COUNCIL OF IRON WORKERS

March 29, 1976

Acme Wire Works, Inc.
326 Menahan Street
Brooklyn, N.Y. 11237

Gentlemen:

On behalf of your striking production and maintenance employees, we repeat the request previously made that they unconditionally return to work at their previous or substantially similar jobs.

Please advise us of the date and time that you desire them to report to work.

Very truly yours,

William Colavito

William Colavito, President

WC:lh
oeiu 153

G.C. [illegible] 14E
[illegible] 8/7/76

RE WORKERS MANUFACTURERS SOCIATION
OF NEW YORK
% 307 SCHOLES STREET
BROOKLYN, NEW YORK 11206

June 19, 1975

269

Shopmen's Local Union No. 455
of the International Association
of Bridge, Structural and Ornamental
Iron Workers
853 Broadway
New York, N.Y. 10003

ATT: MR. WILLIAM COLAVITO

Gentlemen:

We are now approaching the Termination Date of our Current Labor Agreement.

Because of our resolve and dedication to our Businesses we have endured for the last two years.

The Agreement continues to be a costly one.

Assurances to lend the pursuasive powers of the Union to help in the various endeavors of the Firms in our Association have not prevailed.

The costs created by our Contracts with the Union affect the very heart of our Operations, causing it to strain fail and nearly break.

The miracle drugs and cure alls needed are reason, reconciliation and compromise.

Over the past 10 years some of our Industry have reduced their Operation, others have simply gone out of Business.

The result is that many more Employees are out of Jobs, have relocate in other Industries or are on Welfare.

It is self serving to say that there just is not that much work arou

This, while true, does not address the root cause.

The work, our Bread and Butter, is being designed out of the many Cit State and Private Sector Projects.

This was pointed out two years ago and has since accelerated.

Where there were Wire Mesh Partitions, you now find Masonary Walls.

Window Guards are being replaced by Impact Resistant Glass.

Many of the Applications of our Specialty, Woven Wire Mesh are being changed to Expanded Metal or Metal Partitions.

Many of the Shops Manufacturing this material do not belong to Local 455, and some are not Union at all.

The entire Metropolitan Area is a prime target for out of State Competition from non affiliated Shops many of which are located in Southern States with their sources of cheap Labor and/or Sweatheart Unions.

Diminishing Markets have heightened the competition even among our own Shops with the subsequent evaporation of Profits.

Profits is the name of the game.

Without Profits you cannot grow.

You cannot purchase Machines or Tools.

Research and product development are deferred.

Advertising is curtailed.

Increases in the Labor Force is impossible, and actually reverses to a serious problem of layoffs.

One has only to enumerate the erosive factors that dissapate any profits and the Escalations that have occurred in the past two years.

Material Prices, Utilities such as Gas, Electric and Fuel Oil.

Galvanizing, which is an important factor in our Businesses.

Necessary services like Commercial Garbage Removal.

Costly compliance with Fire Inspections, State Labor Inspections, OSHA Inspections, even Local 455 wants to become an Inspector in our Plants.

The increase in Crime and Vandalism victimizes the Employer to a degree much Greater than the Individual.

Insurance Rates skyrocket, protection Devices and Services are costly.

With all these Liabilities and more unamed we are now asked to accept renewed demands for what amounts to Indemnification of our Labor Forces from these crippling expenses which threaten the viability of our Busines

Managements prerogatives, many of which were compromised in our present Contract are proposed to be further undermined.

In our present Enviroment with its attendant economic pressures these proposals as presented by the Union could make the Employers wards of the Union.

Further, in many of our Contracts as basically a finishing Specialty Trade we become involved at the terminal end of most Projects.

The Contracts for said Projects are let at the start of Construction.

These Projects proceed for 2 to 4 and sometimes 5 years in some Public Works Jobs.

A one year Contract precludes our ability to estimate our costs in order to bid these jobs.

Finally, there can be no question that the men have made gains through their Stewardship with the Union.

Their gains have certainly placed them in the position of being able to withstand the inflationary spiral of the last two years.

The same cannot be said for Management.

Our efforts, Management and Labor, must elevate above the usual adversary relationship and try to preserve whatever avocations which remain without the introduction of disastrous penalties for failure.

We must have a coordinated and Equitable Association toward a common goal of profit for all in accordance with their efforts and investments be it time or money.

It is for these reasons that we feel the present Contract subject to determinations made in the Area of Benefits, be continued for a period of 3 years.

Very truly yours,
WIRE WORKERS MANUFACTURERS ASSOCIATION OF NEW YORK

Thomas J. Kennedy

THOMAS J. KENNEDY, PRESIDENT
TJK:lp
encls.

G.C. Ex 15 ~~Form~~ 14 E.L.
8/3/76

IT IS HEREBY STIPULATED AND AGREED by and between

__________ presently located at __________

__________ (hereinafter "Company") and

SHOPMEN'S LOCAL UNION NO. 455, presently located at 853 Broadway, New York, New York (hereinafter "Union") that the parties contract effective July 1, 1973 be extended to 6/30/76, with the following modifications and/or additions:

SECTION 4: Union proposal-Sub-Section "C".

SECTION 8: One additional holiday __________

SECTION 9: Union proposal sub-Section "A" to replace Sub-Section "A" & "B" of Standard Independant contract (S.I.C.) Union proposal Subsection "C".

SECTION 13: Union Proposal except as below - "A" starting at 7th line --(However if such ----first week of his employment by the Company") shall be deleted. A-3 change five to ten and thirty-six (36) to twenty-four (24).

SECTION 16: "A" Present benefit program except that "three weeks for eight years shall be changed to three weeks for seven years".
Union Proposal Subsection "B".
Union Proposal Subsection "D".
Union Proposal Subsection "E"(increased contributions as referred to below.)

SECTION 18: Subsection "B" changed "re" Safety Shoes ----the Company will also cover the cost of one pair of standard safety shoes a year (up to twenty-four dollars) to all ------ Union proposal Subsection "F".

SECTION 24: A fourteen (14) percent increase re: the classification rate, effective July 1, 1975 as follows: Ten (10) percent "re" wages of minimum rates for all employees-Foremen & Finisher .75, Mechanic .65, Laborers .55. per hour. Four (4) percent 30¢ to be contributed (in addition to the present contributions) to the Annuity Fund for all employees. (Contract rates of all classifications to be adjusted accordingly) "E"-Truck drivers included in mechanics classification. Union proposal (Section 24) re: Training credit for apprentices. The last paragraph of proposal.

TRUST FUNDS: Secgion 26, 27, 28, 29, 30, 31.
Union proposal except add Section 16, and add to end of 1st sentence Trust Fund as negotiated in the Allied and Standard Independent contracts.

SECTION 32: Union Proposal.

SECTION 33: July 1, 1975 to June 30, 1976 (If a longer term contract is negotiated in the industry then the parties shall adopt and accept the changes made for the period after the first 1st year as outlined above.)

DATED:

COMPANY __________

BY __________

SHOPMEN'S LOCAL 455 BY __________

oeiu 153

G.C. Ex 16 For Iden-
tif. 8/21/75

Wire Work Manufacturers Association of New York

July 23, 1975

Shopmens Local Union No. 455 of the
International Association of Bridge,
Structural and Ornamental Iron Workers
853 Broadway
New York, N.Y. 10003

RE: STIPULATION PRESENTED TO
ASSOCIATION 7/15/75

Gentlemen:

Our Association has met to consider the above mentioned Stipulation. Delivered by Bill M. the Business Agent for Brooklyn. Upon examination it was found to contain those proposals most objectionable to all our Member shops.

We need not be specific since in the abscence of negotiation, to refuse one or more of these proposals is to refuse the entire Stipulation. We can only hope that the Union position will become more receptive and we can sit down and negotiate a more equitable Contract.

Please let us know of any changes.

Very truly yours,
WIRE WORK MANUFACTURERS ASSOCIATION OF N.Y.

Thomas J. Kennedy

THOMAS J. KENNEDY
TJK:lp

8/7/76 G.C. Ex 17 in Ev.

AGREEMENT MADE & ENTERED into as of the 1st day of January 1976 by and between ACME WIRE WORKS, INC., 366 Ten Eyck St., Brooklyn, New York 11206, hereinafter referred to as the "EMPLOYER" and LOCAL 810, STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, 10 East 15th Street, New York, New York, its successors or assigns, hereinafter referred to as the "UNION".

WITNESSETH:

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I BARGAINING UNIT

The following shall be the appropriate bargaining unit: All employees, exclusive of office clericals, non-working supervisors, watchmen, guards and supervisors as defined in the National Labor Relations Act as amended.

II RECOGNITION

The Employer recognizes the Union as the sole and exclusive collective bargaining agent for all the employees described in the bargaining unit with regard to wages, hours and other conditions of employment.

III UNION SECURITY

It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing, and those who are not members on the execution date of this Agreement shall, on or after the 30th day following the execution date of this Agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after the execution date shall, on or after the 30th day following the beginning of such employment, become and remain members in good standing in the Union.

IV HIRING HALL

The Employer will notify the Union by telephone, confirmed by letter to be mailed on the same day, of all requirements for new help. The Union agrees to furnish applicants, whenever possible, through its hiring hall at its offices at 10 East 15th Street, New York, New York. The Employer retains the right to reject any job applicant referred by the Union. This provision is not to be deemed or interpreted to be a requirement for a closed shop as the hiring hall maintained by the Union as aforesaid is available to both Union and non-Union applicants for jobs and selection of applicants for referral to jobs is on a non-discriminatory basis and not based upon, or in any way affected by, Union membership, By-Laws, regulations, constitutional provisions or any other aspect or obligation of Union membership, policies or requirements. In the event the union is unable to supply satisfactory help within twenty four hours after notification, exclusive of non-working days, the Employer may hire in the open market.

All newly hired help shall obtain referral cards from the Union which cards shall be issued without regard to membership or non-membership in the Union and are issued only for the purpose of appropriate record keeping and bookkeeping by the Union.